

Free movement of EU citizens: developments and perspectives 30 years after Maastricht

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The year 2023 marks the 30th anniversary of Union citizenship and the Union citizens' right to free movement attached to it, both institutionalised with the Treaty of Maastricht which entered into force on 1 November 1993. In view of this occasion, the paper reflects developments and perspectives of the Union citizens' right to free movement introduced with the Treaty of Maastricht 30 years ago as the core element of Union citizenship.

The right of residence of economically inactive Union citizens, as well as their claim to access to social benefits in other EU Member States, constitutes a complex and politically sensitive issue which has been debated controversially in EU law for decades. After some initially dynamic case-law, the CJEU followed a more reserved approach in its *Dano* judgment that was handed down on 11 November 2014. Its interpretation has however remained controversial, notably in view of the specific facts, the selective discussion of EU secondary law, and the unclear relationship to established as well as to subsequent case-law. Thus, the first follow-up judgment has been awaited with interest. It is the judgment in the *CG* case handed down on 15 July 2021 and discussed here; it however proves ambivalent. On the one hand, the CJEU has continued its restrictive reading of Free Movement Directive 2004/38/EC, whilst on the other hand the CJEU has activated for the first time, moreover contrary to *Dano* and with potentially far-reaching consequences, EU fundamental rights as a basis for a claim to social assistance in the host Member State. Further recent judgments, such as *Familienkasse Niedersachsen-Bremen*, handed down on 1 August 2022, also follow a progressive line. Against this background, the development of free movement of Union citizens in the last 30 years as well as its perspectives will be discussed, notably in view of the Union citizen's claim to social solidarity.

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I. Point of departure: The right to freedom of movement of economically inactive persons and the Dano case

1. Ambivalent provision in Free Movement Directive 2004/38/EC

Despite the introduction of Union citizenship that is common to all Member State nationals (Art. 9 TEU and Art. 20 et seqq. TFEU), including a general right to free movement (Art. 21 TFEU) going hand-in-hand with this status – and no longer contingent on the exercise of gainful employment –, the right to free movement accruing to Union citizens, which today is primarily¹ codified in Free Movement Directive 2004/38/EC², distinguishes between economically active and economically inactive persons³. Whilst the former enjoy a right of residence in other EU Member States which does not depend on economic conditions, including comprehensive inclusion in the host Member State’s social assistance system⁴, this does not apply to the latter.

In order that economically inactive Union citizens do not “become an unreasonable burden on the social assistance system of the host Member State” (as per recital 10 of Directive 2004/38/EC), Art. 7(1)(b) of Directive 2004/38/EC provides for economic conditions that are required to be met by this group of individuals for periods of residence exceeding three months⁵ (until acquiring a right of permanent residence, as a rule after five years’ legal residence, Art. 16 et seq. of Directive 2004/38/EC), thus more specifically stipulating that they must have sufficient resources and comprehensive sickness insurance cover^{6,7}. That situations in which

¹ See recently on further legal bases for the right of residence of economically inactive persons CJEU, C-181/19, *Jobcenter Krefeld v. JD*, EU:C:2020:794 [Art. 10 Reg. (EU) No. 492/2011].

² OJ 2004 L 158, p. 77, amended by Reg. (EU) No. 492/2011, OJ 2011 L 141, p. 1.

³ See for a comprehensive account of the development of the right of free movement and Union citizenship Wollenschläger, F. (2007/2017). *Grundfreiheit ohne Markt*, Tübingen: Mohr Siebeck; *idem* (2011). *A New Fundamental Freedom beyond Market Integration: Union Citizenship and its Dynamics for Shifting the Economic Paradigm of European Integration*. *ELJ* 17 (1), pp. 1–34; *idem* (2022). *Grundrechtsschutz und Unionsbürgerschaft*, in: *Enzyklopädie Europarecht*. Hatje, A. and Müller-Graff, P.-C. (Eds.), Baden-Baden: Nomos, Vol. 1, § 13, pp. 639–772 [paras 126 et seqq.]; furthermore Kadelbach, S. (2021). *Das Freizügigkeitsrecht der Unionsbürger*, in: *Enzyklopädie Europarecht*. Wollenschläger, F. (Ed.), Baden-Baden: Nomos, Vol. 10, § 5, pp. 193–262.

⁴ See only CJEU, 249/83, *Hoecx*, EU:C:1985:139, paras. 23 et seqq.; C-379/11, *Caves Krier Frères*, EU:C:2012:798, para. 53; Wollenschläger, *New Fundamental Freedom* (supra note 3), pp. 4 et seqq.

⁵ Stays of up to three months are not subject to the economic criteria of residence (Art. 6 of Directive 2004/38/EC), but Union citizens must not “become an unreasonable burden on the social assistance system of the host Member State” [Art. 14(1) of Directive 2004/38/EC], and “the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence” [Art. 24(2) of Directive 2004/38/EC; this has been confirmed as in line with EU primary law, see CJEU, C-299/14, *García-Nieto*, EU:C:2016:114, paras. 45 et seqq.].

⁶ See on this requirement CJEU, C-535/19, *A*, EU:C:2021:595.

⁷ As explained elsewhere, see Wollenschläger, F. (2017). *Consolidating Union Citizenship*, in: *Questioning Union Citizenship*, Thym, D. (Ed.), Oxford: Hart, pp. 171–190 [175 et seq. note 24], the economic criteria of residence – as established for the public policy proviso (see in that respect CJEU, 48/75, *Royer*, EU:C:1976:57, paras. 28 et seq.; 118/75, *Watson and Belman*, EU:C:1976:106, para. 20; 157/79, *Pieck*, EU:C:1980:179, para. 9) – should not be considered conditions *stricto sensu*, i.e. in the sense that not fulfilling them automatically terminates the right of residence; rather not fulfilling them only allows for an expulsion. See in more detail Wollenschläger, *Grundfreiheit*

these conditions are not met are nonetheless not simple to resolve emanates from the fact that the provision contained in said Directive 2004/38/EC is less unambiguous than stipulating economic conditions required for residence might suggest at first sight. True, Art. 14(2), first sentence, of Directive 2004/38/EC confirms that “Union citizens and their family members [...] have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein”; that having been said, Art. 14(3) of Directive 2004/38/EC immediately relativises this requirement, hence creating an ambiguous situation. This is because, according to that provision, “An expulsion measure shall not be the automatic consequence of a Union citizen’s or his or her family member’s recourse to the social assistance system of the host Member State.” The aspects that are relevant for this decision of the host Member State are fleshed out in recital 16 of Directive 2004/38/EC: “As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled. Therefore, an expulsion measure should not be the automatic consequence of recourse to the social assistance system. The host Member State should examine whether it is a case of temporary difficulties and take into account the duration of residence, the personal circumstances and the amount of aid granted in order to consider whether the beneficiary has become an unreasonable burden on its social assistance system and to proceed to his expulsion [...]” With this proviso of proportionality, which demands that the circumstances of the individual case are also to be taken into account where strict economic residence conditions are not met, the Union legislature has codified the *CJEU*’s case-law, which demands that the individual case be appropriately examined, and has hence lent a dynamic quality to Union citizens’ right to freedom of movement, namely the *Grzelczyk* and *Baumbast* cases⁸. In these cases, it has been held irrelevant in view of fulfilling the economic criteria of residence that a student temporarily becomes dependent on social assistance or that a person’s health insurance does not cover all risks. Incidentally, in contrast

(supra note 3), pp. 180 et seqq., 187 et seq.; furthermore Schönberger, C. (2006). Die Unionsbürgerschaft als Sozialbürgerschaft, *Zeitschrift für Ausländerrecht und Ausländerpolitik (ZAR)*, pp. 226–232, 228. Disagreeing e.g. Thym, D. (2015). The Elusive Limits of Solidarity: Residence Rights of and Social Benefits for Economically Inactive Union Citizens, *CML Rev* 52 (1), pp. 17–50 [39 et seqq.]. Relativised, though, with regard to the right of permanent residence *CJEU*, Joined Cases C-424/10 and C-425/10, *Ziolkowski et al.*, EU:C:2011:866, paras. 36 et seqq. – for a different view Wollenschläger, *Grundfreiheit* (supra note 3), pp. 154 et seq. Moreover, the recognition of an EU right to residence according to Art. 21 (1) TFEU irrespective of the conditions of Free Movement Directive 2004/38/EC in the judgment at hand (para. 87; see on this II.2.a below) may be considered speaking in favour of understanding the economic criteria of residence not as conditions *stricto sensu* as advocated here.

⁸ *CJEU*, C-413/99, *Baumbast*, EU:C:2002:493, paras. 90 et seqq.; C-184/99, *Grzelczyk*, EU:C:2001:458, paras. 37 et seqq. [from a methodological point of view, the latter decision was based on a different approach, since the *CJEU* did not apply the principle of proportionality, but interpreted the economic criteria of residence restrictively in view of the concept of a certain financial solidarity required by the directive), see in greater detail Wollenschläger, *Grundfreiheit* (supra note 3), pp. 171 et seqq. and 174 ; *idem*, *New Fundamental Freedom* (supra note 3), pp. 18 et seqq.].

to the German-language version, this proviso is already expressed in other language versions in the wording chosen for the economic conditions for residence: Unlike in the German version, Art. 7(1)(b) of Directive 2004/38/EC does not strictly require in the English-language version “sufficient resources”, or “*ausreichende Existenzmittel*”, but puts it as follows: “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 [...] 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*” [emphasis added]⁹.

The *CJEU* has applied these principles in its judgment in the *Brey* case of 19 September 2013, first of all finding that “the fact that a national of another Member State who is not economically active may be eligible, in light of his low pension, to receive that benefit [compensating for the difference between the pension and the minimum level of subsistence] could be an indication that that national does not have sufficient resources to avoid becoming an unreasonable burden on the social assistance system of the host Member State for the purposes of Article 7(1)(b) of Directive 2004/38”.¹⁰ The judgment goes on to relativise this finding by continuing as follows: “However, the competent national authorities cannot draw such conclusions without first carrying out an overall assessment of the specific burden which granting that benefit would place on the national social assistance system as a whole, by reference to the personal circumstances characterising the individual situation of the person concerned.”¹¹

Finally, it shall be stressed that a right of residence in accordance with Directive 2004/38/EC constitutes also a prerequisite for the right to receive equal treatment in the host Member State pursuant to Art. 24 of same directive. For, the latter stipulates: “Subject to such specific provisions as are expressly provided for in the 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“ (emphasis added).¹² Thus, the ambiguities just outlined for the right of residence of economically inactive

⁹ This corresponds to the French version: “Tout citoyen de l’Union a le droit de séjourner sur le territoire d’un autre État membre pour une durée de plus de trois mois: [...] b) s’il dispose, pour lui et pour les membres de sa famille, de ressources suffisantes *afin de ne pas devenir une charge pour le système d’assistance sociale de l’État membre d’accueil* au cours de son séjour, et d’une assurance maladie complète dans l’État membre d’accueil” [emphasis added].

¹⁰ *CJEU*, C-140/12, *Brey*, EU:C:2013:565, para. 63.

¹¹ *CJEU*, C-140/12, *Brey*, EU:C:2013:565, para. 64. See on the point of reference of the proportionality test (situation of the applicant decisive, not burden on the national system of social assistance by the individual claim) *CJEU*, C-67/14, *Alimanovic*, EU:C:2015:597, para. 62; see Wollenschläger, Consolidating Union Citizenship (supra note 7), pp. 183 et seq.

¹² See *CJEU*, C-411/20, *Familienkasse Niedersachsen-Bremen*, EU:C:2022:602, paras. 41 et seq.

persons with regard to fulfilling the economic criteria of residence in view of the proviso of proportionality also concern their claim to equal access to social benefits in the host Member State.¹³

2. (No) paradigm shift resulting from the judgment in the *Dano* case of 11 November 2014!?

The *CJEU* shifted the emphasis with the *Dano* case, which was ruled on a little more than one year after the *Brey* case¹⁴: In fact, it denied the existence of a right of residence and a right to (equal) access to social benefits in the host Member State to a person who does not meet the economic residence conditions, without discussing the abovementioned proviso of proportionality, the provisions of the directive which flesh out this proviso, and the established case-law which confirms it; on the contrary, perhaps explainable with the controversial debate that was going on at that time regarding EU freedom of movement in the context of Brexit, it emphasised the economic residence conditions for economically inactive persons, as well as their aim to protect the Member States' social assistance systems¹⁵. In the final analysis, this one-sided perspective was immaterial for the outcome of the ruling in view of the specific circumstances of the case, given that it is proportionate to refuse "to grant social benefits to economically inactive [and non-job-seeking] Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence economically"¹⁶. However, it imparts an incomplete picture of Union law, and has kindled an interpretation of the judgment as constituting a rejection of the proviso of proportionality. Advocate General *de la Tour* for instance points out in his Opinion in the case being discussed here "that it follows from the judgment in *Dano* (paragraph 81) that the Court did not consider it necessary to limit the situations in which an individual examination must be carried out." (para. 99 note 84 – albeit

¹³ See for a wide interpretation of Art. 4 Reg. (EU) No. 883/2004 as absolute prohibition of discriminations (in case of direct discriminations) *CJEU*, C-411/20, *Familienkasse Niedersachsen-Bremen*, EU:C:2022:602, paras. 56 et seqq.

¹⁴ See comprehensively on these issues Wollenschläger, F. (2014). Keine Sozialleistungen für nichterwerbstätige Unionsbürger?, *Neue Zeitschrift für Verwaltungsrecht (NVwZ)* 33 (24), pp. 1628–1632 [1628 et seqq.]; *idem*, Consolidating Union Citizenship (supra note 7), pp. 179 et seqq.; *idem*, Grundrechtsschutz (supra note 3), § 13, para. 146.

¹⁵ *CJEU*, C-333/13, *Dano*, EU:C:2014:2358, paras. 56 et seqq.

¹⁶ *CJEU*, C-333/13, *Dano*, EU:C:2014:2358, para. 78, on the lack of status as a jobseeker and the intention to seek work *ibid.*, para. 66. Cf. also, emphasising the specific situation in the *Dano* case, *CJEU*, C-181/19, *Jobcenter Krefeld v. JD*, EU:C:2020:794, para. 68.

with criticism given the limitations of this approach, cf. on this II.1 below); this interpretation can also be found in some of the literature on the *Dano* case¹⁷.

Such an interpretation of the judgment however conflicts with the outlined framework of Union law, and has also been placed in question by follow-up case-law which once more invokes the proviso of proportionality. The *CJEU* for instance referred in the *García-Nieto* case of 25 February 2016 to the *Brey* case, pointing out that “the host Member State” is required to “take account of the individual situation of the person concerned before it adopts an expulsion measure or finds that the residence of that person is placing an unreasonable burden on its social assistance system (judgment in *Brey*, C-140/12, EU:C:2013:565, paragraphs 64, 69 and 78)”¹⁸. This is not precluded by the fact that the *CJEU* did not consider a proportionality test to be necessary (on a case-by-case basis) in the *García-Nieto* case, since the provision contained in the Free Movement Directive forming the subject-matter of this dispute in accordance with which economically inactive Union citizens do not need to meet any economic residence conditions for stays of up to three months [Art. 6(1) of Directive 2004/38/EC], whilst at the same time however not having an equal entitlement to social assistance [Art. 24(2) of Directive 2004/38/EC], is unambiguous, not in need of further concretisation and proportionate¹⁹. The same applies to the provision regarding the position of former workers, which the *CJEU* confirmed in the *Alimanovic* case as being unambiguous and proportionate²⁰. Art. 7(3)(b) and (c) of Directive 2004/38/EC provides with regard to this group of individuals that the status of worker (and hence the non-application of the economic residence conditions and the comprehensive entitlement to social benefits in the host Member State) will be retained for at

¹⁷ Nic Shuibhne, N. (2015). Limits rising, duties ascending: The Changing Legal Shape of Union Citizenship. *CML Rev.* 52 (4), pp. 889–938 [913 et seq. and 935]; O’Brien, C. (2021). Between the Devil and the Deep Blue Sea: Vulnerable Union citizens Cast Adrift in the UK Post-Brexit. *CML Rev.* 58 (2), pp. 431–470 [457 et seq.]; Peers, S. (2015). Benefits for Union citizens: A U-Turn by the Court of Justice?. *CLJ* 74 (2), pp. 195–198 [196 et seq.]; Spaventa, E. (2017). Earned Citizenship – Understanding Union Citizenship through its Scope, in: *Union citizenship and Federalism*, in: Kochenov, D. (Ed.), Cambridge: Cambridge University Press, pp. 204–225 [221]; Steiger, D. (2018). Freizügigkeit in der EU und Einschränkungen von Sozialleistungen für EU-Ausländer. *Europarecht (EuR)* 53 (3), pp. 304–339 [327 et seq.]. A different view is rightly taken by Kramer, D. (2016). Earning Social Citizenship in the European Union: Free Movement and Access to Social Assistance Benefits Reconstructed. *CYELS* 18, pp. 270–301 [292 et seq.]; Verschueren, H. (2015). Preventing ‘Benefit Tourism’ in the EU: A Narrow or Broad Interpretation of the Possibilities Offered by the ECJ in *Dano*?. *CML Rev.* 52 (2), pp. 363–390 [388 et seq.]; Wollenschläger, *Sozialleistungen* (supra note 14), pp. 1628 et seq.; *idem*, *Consolidating Union Citizenship* (supra note 7), pp. 179 et seq. See also Kadelbach, *Freizügigkeitsrecht* (supra note 3), § 5, paras. 85 and 92 et seq.

¹⁸ *CJEU*, C-299/14, *García-Nieto*, EU:C:2016:114, para. 46. See also, C-67/14, *Alimanovic*, EU:C:2015:597, para. 59; C-165/14, *Rendón Marín*, EU:C:2016:675, paras. 45 et seq.

¹⁹ *CJEU*, C-299/14, *García-Nieto*, EU:C:2016:114, paras. 41 et seq., esp. 49. See, however, for a claim to equal treatment with regard to child benefits in this period *CJEU*, C-411/20, *Familienkasse Niedersachsen-Bremen*, EU:C:2022:602, paras. 27 et seq.

²⁰ *CJEU*, C-67/14, *Alimanovic*, EU:C:2015:597, paras. 59 et seq. Disagreeing, demanding a case-by-case assessment AG Wathelet, paras. 103 et seq.; Steiger, *Freizügigkeit* (supra note 17), pp. 336 et seq.

least six months after having been employed for up to one year, and in fact continues even longer (actually without limitation according to the CJEU's case-law²¹) after having been employed for more than one year. Whilst these two decisions relate to provisions adopted by the Union legislature that are unambiguous and not in need of further concretisation in individual cases, which can hardly be regarded as disproportionate (even without an examination of proportionality on a case-by-case basis), Art. 14(3) of Directive 2004/38/EC [and also Art. 7(1)(b) of Directive 2004/38/EC in other language versions than the German one], as shown, requires a proportionality test on a case-by-case basis, where economically inactive Union citizens do not, or no longer, meet the economic residence conditions in the case of a stay of more than three months until they acquire a right of permanent residence²².

II. The ambivalence of the judgment in the CG case: continuing and relativising *Dano*

It remained to be seen, against the outlined background, how the *CJEU* would continue the *Dano* case-law and determine the position of economically inactive persons in the EU's free movement regime with regard to stays of more than three months up to acquisition of the right of permanent residence. This particularly applied to constellations in which it was more difficult to assess the proportionality of refusal of the right of residence and equal entitlement to social benefits securing a minimum level of subsistence than in the *Dano* case (this case did not involve seeking a job, but entering the country solely in order to benefit from social assistance in the destination State). Would the *CJEU* continue *Dano* in the sense of a strict approach, and deny the proviso of proportionality (perhaps even explicitly)? Or would the Court take recourse to such a proviso, and hence place *Dano* into perspective? The judgment at hand of 15 July 2021 in the CG case, handed down almost seven years after the *Dano* case, offered an opportunity to take up a position. It involved a more difficult constellation than did the *Dano* case, given that the applicant in the main proceedings, who had no resources, was neither a worker nor a job-seeker, but had "entered the territory" of the United Kingdom [...] "in order to accompany her partner, the father of her young children, from whom she is separated on account of domestic violence" (para. 73). The response of the *CJEU* is ambivalent, though: On

²¹ See CJEU, C-483/17, *Tarola*, EU:C:2019:309, paras. 27, 44; Steiger, *Freizügigkeit* (supra note 17), p. 330. See however on the requirement of being "available and able to re-enter the labour market of the host Member State within a reasonable period" CJEU, C-618/16, *Prefeta*, EU:C:2018:719, paras. 37 et seqq. See further Wollenschläger, *Grundrechtsschutz* (supra note 3), § 13, para. 142.

²² See on the permissibility of a generalising approach to enable efficient management of individual cases AG Wathelet, in: CJEU, C-333/13, *Dano*, EU:C:2014:341, para. 132; further, C-158/07, *Förster*, EU:C:2008:630, paras. 34 et seqq. Emphasising the need for a comprehensive balance of interests in each individual case C-367/11, *Deborah Prete*, EU:C:2012:668, para. 51. See also Thym, D. (2014). *Sozialleistungen für und Aufenthalt von nichterwerbstätigen Unionsbürgern*. *Neue Zeitschrift für Sozialrecht (NZS)* 23 (3), pp. 81–90 [85 et seq.].

the one hand, it dealt with Free Movement Directive 2004/38/EC in line with the restrictive approach taken in the Dano judgment (1.), whilst on the other hand, by activating EU fundamental rights – which was still rejected in the Dano case – as the foundation of a claim to social assistance in the host Member State, it gave a new and potentially momentous aspect to the debate (2.).

1. Continuation of Dano with regard to Free Movement Directive 2004/38/EC

The CG case continues the restrictive interpretation of Free Movement Directive 2004/38/EC that was developed in the Dano case: Given that CG was said not to have sufficient resources at her disposal, she was said not to be entitled to a right of residence in accordance with Art. 7(1)(b) of Directive 2004/38/EC. This was said to also render unfounded the asserted entitlement to receive equal treatment with the nationals of the host Member State with regard to entitlement to social assistance since the corresponding entitlement to receive equal treatment for Union citizens residing in other EU countries (Art. 24 of Directive 2004/38/EC) was said to be contingent on residence in accordance with the conditions of said directive (which were not met) (paras. 72 et seq.). As in the Dano case, neither the proviso of proportionality of Art. 14(3) of Directive 2004/38/EC and Art. 7(1)(b) of Directive 2004/38/EC (cf. on this I.1 above), nor the case-law based thereon – prior and subsequent to the Dano case – are mentioned (cf. on this I.1 and 2 above).

Even were one to interpret the silence of the Court as constituting confirmation of a restrictive Dano line²³, we still need to take into account and to criticise the fact that this silence conflicts with the circumstance that the above provisions contained in the directive [Art. 7(1)(b) and Art. 14(3) of Directive 2004/38/EC] can be counted among the applicable secondary law, and hence cannot be ignored; the *CJEU* has moreover explicitly acknowledged the prohibition of expulsion provided for in Art. 14(4)(b) of Directive 2004/38/EC as forming the basis for a right of residence under the directive²⁴, and this is also relevant to Art. 14(3) of Directive 2004/38/EC²⁵. What is more, the question arises as to the significance of the case-law which – prior and subsequently to the Dano case – refers to the proviso of proportionality. Its relevance thus continues to be unclear, and needs to be clarified on the part of the *CJEU*²⁶. The non-

²³ See already Wollenschläger, *Sozialleistungen* (supra note 14), pp. 1628 et seq.; *idem*, *Consolidating Union Citizenship* (supra note 7), pp. 179 et seq.; *idem*, *Grundrechtsschutz* (supra note 3), § 13, para. 146.

²⁴ *CJEU*, C-67/14, *Alimanovic*, EU:C:2015:597, para. 52.

²⁵ See also Wollenschläger, *Grundrechtsschutz* (supra note 3), § 13, para. 145; *idem*, *Consolidating Union Citizenship* (supra note 7), pp. 181 et seq.

²⁶ Similarly Kadelbach, *Freizügigkeitsrecht* (supra note 3), § 5, para. 93.

consideration of the proviso of proportionality also appears questionable for other reasons: In light of the circumstances of the CG case, not only does the question arise of the proportionality of denying the right of residence more determinedly than in the Dano case (entry into the territory in order to accompany her partner, and not motivated by benefiting from social assistance in the country of destination; separation on account of domestic violence), as was also pointed out by Advocate General *de la Tour*²⁷; the *CJEU* rather relativised the outcome of the strict application of Free Movement Directive 2004/38/EC by acknowledging a fundamental right to social assistance (II.2 on this). Given the *CJEU*'s review of the compatibility denying (equal) entitlement to social assistance with EU fundamental rights, it appears questionable why this aspect does not already play a role in the application of the corresponding provisions of the directive for which the EU fundamental rights are also material [Art. 51(1) CFR], particularly given the fact that the *CJEU* has already measured secondary law, which regulates an entitlement to social benefits (for third-country nationals) by the yardstick of the Charter of Fundamental Rights²⁸.

By contrast, Advocate General *de la Tour* pointed out in his Opinion that “[i]n the judgment in *Brey*, the Court laid down a condition, namely that that exclusion [from social assistance where the economic residence conditions are not met] must not be automatic in all circumstances” (para. 56), and that “when the Court has ruled on the compatibility with EU law of national legislation refusing to grant social assistance to economically inactive citizens, it has interpreted Article 24 of Directive 2004/38 as precluding their being excluded *in all circumstances and automatically*” (para. 87). And the AG goes on to say, with regard to the case-law of the Court in the Dano case which neglects the proviso of proportionality, that the situation of the applicant in the main proceedings in the CG case “demonstrates the limits of the failure to carry out an individual examination before a decision is taken to exclude, or not to exclude, a Union citizen from the benefit of social assistance” (para. 99). Advocate General *de la Tour* did not however bring these considerations to fruition when it came to a right of residence under Free Movement Directive 2004/38/EC in view of its Art. 7(1)(b) and Art. 14(3), but only in the context of the entitlement to equal treatment pursuant to Art. 24 of Directive 2004/38/EC, which he considers

²⁷ See Opinion, para. 99: “Even though a number of points in common with the facts referred to in the judgment in *Dano* may be identified, the facts of the main proceedings have characteristics, highlighted more particularly at the hearing, which justify the development of the Court’s case-law [...]”.

²⁸ See specifically with regard to Art. 34 CFR *CJEU*, C-571/10, *Kamberaj*, EU:C:2012:233, paras. 91 et seq. See Eichenhofer, J. (2021). *Das Recht auf Daueraufenthalt*, in: Enzyklopädie Europarecht, Wollenschläger, F. (Ed.), Baden-Baden: Nomos, Vol. 10, § 23, pp. 853–884 [para. 38]; Janda, C. (2021). *Zugang zu Sozialleistungen für Drittstaatsangehörige*, in: Enzyklopädie Europarecht, Wollenschläger, F. (Ed.), Baden-Baden: Nomos, Vol. 10, § 25, pp. 923–970 [para. 103].

also applicable in case of a right to residence that is based only on national law (i.e. without the residence conditions that were stipulated in the directive being met). Invoking this entitlement could not be globally denied, including against the background of requirements of EU fundamental rights, vis-à-vis economically inactive Union citizens such as CG who do not have sufficient resources; in fact, an examination was called for which did justice to the circumstances of the individual case (paras. 84 et seqq., paras. 99 et seqq., and paras. 103 et seqq.). As has been demonstrated, it would have been possible to already take these aspects into account within the framework of the directive, via the proviso of proportionality contained in the latter.

Despite the criticism that has been levelled at neglect of the proviso of proportionality, it needs to be stressed that Union law maps out a rule-exception ratio with regard to the applicability of economic residence conditions (standard case), and their placement into perspective for reasons of proportionality (exceptional case where special circumstances apply)²⁹. For, the right to freedom of movement open to citizens of the Union is explicitly subject to the proviso of the “limitations and conditions laid down” in primary and secondary law (Art. 21(1) TFEU), and the economic residence conditions of Art. 7(1)(b) of Directive 2004/38/EC lend concrete form to this proviso. Their relevance is thus undeniable as a matter of principle, and this has to be emphasised in response to the in some cases severe criticism of the CJEU’s recent case-law³⁰ affirming these conditions, especially since the applicability of the residence conditions proves, generally speaking, to be proportionate given the objective that they pursue, i.e. preventing economically inactive persons from becoming “an unreasonable burden on the social assistance system of the host Member State” (recital 10 of Directive 2004/38/EC)³¹.

Contrary to Advocate General *de la Tour* (see Opinion, paras. 67 et seqq.), one must finally concur with the Court that a right of residence granted on a purely national basis without the

²⁹ See on these issues Wollenschläger, Grundrechtsschutz (supra note 3), § 13, para. 146; *idem*, Consolidating Union Citizenship (supra note 7), pp. 180 et seqq.

³⁰ See for a critical view e.g. O’Brien, C. (2016). *Civis Capitalist Sum: Class as the New Guiding Principle of EU Free Movement Rights*, pp. 937–977 [937 et seq.: “recent ECJ rulings hollow out citizenship at EU level, and endorse nationality-based discrimination, creating a moral vacuum within the free movement framework”]; *idem*, (2021). *The great EU citizenship illusion exposed: equal treatment...*, ELRev. 46 (6), pp. 801–817 [806]: “tyranny of the Directive”; Nic Shuibhne, *Limits* (supra note 17), pp. 903 et seqq., 926 et seqq.; see also p. 891: “primaryness of Union citizenship rights has exploded”; Spaventa, *Earned Citizenship* (supra note 17), pp. 219 et seqq.: “Earned Citizenship”, “reactionary phase, with its return to market citizenship”; Steiger, *Freizügigkeit* (supra note 17), pp.329 et seqq. See, moreover, on the criticism Garner, O. (2018). *The Existential Crisis of Citizenship of the European Union: The Argument for an Autonomous Status*. CYELS 20, pp. 116–146 [127 et seqq.]. Different (also over and above the case-law) Ferrera, M. (2016). *The Contentious Politics of Hospitality: Intra-EU Mobility and Social Rights*. ELJ 22 (6), pp. 791–805 [803 et seq.].

³¹ See also Garner, *Crisis* (supra note 30), pp. 136 et seq.

conditions of Free Movement Directive 2004/38/EC being met does not give rise to an entitlement to equal treatment in accordance with Art. 24 of Directive 2004/38/EC, since the latter is already contingent, in terms of its wording, on a right of residence “on the basis of this Directive” (paras. 81 et seqq.). The *CJEU* however previously ruled differently with regard to the applicability of the general prohibition of discrimination (Art. 18 TFEU) in the *Sala* and *Trojani* cases by holding that the latter is not contingent on a right of residence under Union law³². That having been said, and as stated elsewhere in greater detail³³, this approach is to be rejected given that such a situation (i.e. the lack of a right to residence under EU law) does not fall within the scope of the Treaties as set out in Art. 18 TFEU. This previous case-law also played no role in the case at hand because the *CJEU* considers the secondary-law entitlement to equal treatment contained in Art. 24 of Directive 2004/38/EC as a “specific expression” of the general prohibition of discrimination (Art. 18 TFEU) “in relation to Union citizens who exercise their right to move and reside within the territory of the Member States” (para. 66), which would rule out recourse to the primary-law prohibition of discrimination in accordance with Art. 18 TFEU (in conjunction with Art. 21 TFEU) (para. 67)³⁴. This understanding of Art. 24 of Directive 2004/38/EC, as a conclusive expression of the general prohibition of discrimination, is however inconsistent with the affirmation of the applicability of EU fundamental rights (see II.2 below on this). If the Member States implement Union law within the meaning of Art. 51(1) CFR even in the absence of a right of residence in accordance with the directive, it is questionable why they are then not also acting within the scope of the Treaties within the meaning of Art. 18 TFEU³⁵. What is more, the prohibition of discrimination on grounds of nationality also constitutes an EU fundamental right acknowledged in the Charter [Art. 21(2) CFR], so that this prohibition could also be applied for this reason, despite the parallel scope and interpretation [Art. 52(2) CFR].

³² *CJEU*, C-85/96, *Martínez Sala*, EU:C:1998:217, paras. 60 et seqq.; C-456/02, *Trojani*, EU:C:2004:488, paras. 36 et seqq. See on this (and with a critical view on the *CJEU*'s judgment at hand) O'Brien, EU citizenship illusion (supra note 30), pp. 806 et seqq.; and in the Brexit context *idem*, Between the Devil and the Deep Blue Sea (supra note 17), pp. 456 et seqq., 464 et seqq.

³³ Wollenschläger, *Grundfreiheit* (supra note 3), pp. 216 et seqq.

³⁴ See for a critical view on the *CJEU*'s treatment of Article 18 TFEU O'Brien, EU citizenship illusion (supra note 30), pp. 806 et seqq.

³⁵ See also O'Brien, EU citizenship illusion (supra note 30), p. 812.

2 An entitlement to social assistance for economically inactive EU foreigners based on EU fundamental rights?

The *CJEU* already had to answer the question in the *Dano* case as to whether EU fundamental rights give rise to an entitlement to social benefits securing a minimum level of subsistence (social assistance) for economically inactive EU foreigners in the host Member State. The acknowledgement of such a social fundamental right by the judiciary would admittedly not only create tensions vis-à-vis the margin of appreciation open to the legislature when according social benefits. In fact, it would also have run counter to the decision of the Union legislature to make the right of residence of economically inactive persons contingent as a matter of principle on meeting economic conditions – which, moreover, should be applied strictly at least according to the interpretation of the *CJEU* in the *Dano* case – in the interest of protecting the national social assistance systems, and hence also (as a matter of principle) not providing for an entitlement to receive equal treatment with nationals with regard to access to social assistance. In line with the refusal to grant a right of residence and an entitlement to equal treatment under secondary law, the *CJEU* therefore also pursued a restrictive approach in the *Dano* case with regard to EU fundamental rights, and already denied their applicability *ratione materiae* pursuant to Art. 51(1) CFR. The judgment in the *CG* case thus constitutes a caesura, and affirms both the applicability of EU fundamental rights (a) with potentially far-reaching consequences (b), and the existence of an EU fundamental right to social assistance (c).

a) Applicability of EU fundamental rights

The applicability of the EU fundamental rights as affirmed by the *CJEU* (paras. 84 et seqq.) is however convincing only in terms of its outcome, but not of its grounds. The *CJEU's* point of reference is the right of residence granted by the Member States on the basis of national law only, i.e. beyond the conditions of Directive 2004/38/EC. True, “that action” could “not be regarded as an implementation of that directive. In so doing, those authorities [of the United Kingdom] by contrast recognised the right of a national of a Member State to reside freely on its territory conferred on EU citizens by Article 21(1) TFEU, without relying on the conditions and limitations in respect of that right laid down by Directive 2004/38. It follows that, where they grant that right in circumstances such as those in the main proceedings, the authorities of the host Member State implement the provisions of the FEU Treaty on Union citizenship, which, as pointed out in paragraph 62 of the present judgment, is destined to be the fundamental status of nationals of the Member States, and that they are accordingly obliged to comply with the provisions of the Charter” (paras. 87 et seq.). It however already appears questionable to

consider the concretisation of the right of residence under secondary law in isolation from the guarantee under primary law, given that Art. 21(1) TFEU explicitly only guarantees the right to freedom of movement “subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect”. This means that the decision, which is not determined by Union law (cf. Art. 37 of Directive 2004/38/EC³⁶), to grant a right of residence, over and above the conditions of the Free Movement Directive, to which the *CJEU* does not object, cannot be interpreted as constituting acknowledgement of a right of residence under Union law. Such an approach moreover conflicts with the finding of the *CJEU* in para. 83 that “it is for each Member State that has decided to adopt a system that is more favourable than that established by the provisions of directive 2004/38 to specify the consequences of a right of residence granted on the basis of national law alone”. A point to be resolved in future must moreover be stressed, and one which is decisive for the consequences of the judgment, namely whether EU fundamental rights already apply if a Member State refrains from taking action to terminate residence, or whether it is necessary to acknowledge a right of residence.

In the final analysis, the applicability of the fundamental rights under EU law is nonetheless to be concurred with. Firstly, the conformity of secondary EU law (Directive 2004/38/EC) with fundamental rights at Union level is in question, and this question must be answered by applying EU fundamental rights [Art. 51(1) CFR]. Secondly, where a Member State denies the right of residence or entitlement to equal treatment, this constitutes a restriction of the general right to freedom of movement (Art. 21 TFEU), or a discrimination on grounds of nationality within the meaning of Art. 18 in conjunction with Art. 21(1) TFEU, thus constituting an implementation of Union law within the meaning of Art. 51(1) CFR;³⁷ this finding is also not affected by the concretisation of these primary-law guarantees under secondary law in the shape of Free Movement Directive 2004/38/EC, given that the Member States, at least when denying the right

³⁶ This provision reads: “The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.” In the joined Cases C-424/10 and C-425/10, *Ziolkowski and Szeja*, EU:C:2011:866, paras. 49 et seq., the *CJEU* rejected the idea that Article 37 of Directive 2004/38/EC had to be interpreted such in a way, “that [...] provisions [which prove to be more favourable according to national law] must be incorporated into the system introduced by the directive. Article 37 of Directive 2004/38 simply provides that the directive does not preclude the laws of the Member States from introducing a system that is more favourable than that established by the directive. However, it is for each Member State to decide not only whether it will adopt such a system but also the conditions and effects of that system, in particular as regards the legal consequences of a right of residence granted on the basis of national law alone.” For a different view with regard to the right to equal treatment in accordance with Art. 24 of Directive 2004/38/EC AG de la Tour, in the same joined Cases, paras. 67 et seqq. See further O’Brien, EU citizenship illusion (supra note 30), pp. 809 et seq.

³⁷ See on the application of EU fundamental rights to the Member States when restricting fundamental freedoms *CJEU*, C-390/12, *Pfleger et al.*, EU:C:2014:281, paras. 30 et seqq.; in more detail on this Wollenschläger, Grundrechtsschutz (supra note 3), § 13, paras. 25 et seqq.; *idem* (2014). Anwendbarkeit der EU-Grundrechte im Rahmen einer Beschränkung von Grundfreiheiten. Europäische Zeitschrift für Wirtschaftsrecht (EuZW) 25 (15), pp. 577–580.

of residence and the entitlement to equal treatment in accordance with the provisions contained in the Directive, are implementing Union law within the meaning of Art. 51(1) CFR³⁸.

b) Civis europaeus sum? Reflections on the scope of applicability of fundamental rights

By linking protection under EU fundamental rights to residence in another EU Member State (see para. 89) covered by Art. 21 TFEU (directly or via acknowledgement as posited by the *CJEU*), without further qualification, the *CJEU* has brought into the debate potentially far-reaching obligations incumbent on the Member States related to fundamental rights, given that this may result in nationals of other Member States already being able to invoke EU fundamental rights when staying in other EU Member States. The postulate of protection of fundamental rights linked with Union citizenship stated shortly after the introduction of the latter by Advocate General *Jacobs* in the *Konstantinidis* case, would thus become reality:

“In my opinion, a Community national who goes to another Member State as a worker or self-employed person under Articles 48, 52 or 59 of the Treaty is entitled not just to pursue his trade or profession and to enjoy the same living and working conditions as nationals of the host State; he is in addition entitled to assume that, wherever he goes to earn his living in the European Community, he will be treated in accordance with a common code of fundamental values, in particular those laid down in the European Convention on Human Rights. In other words, he is entitled to say ‘civis europeus sum’ and to invoke that status in order to oppose any violation of his fundamental rights.”³⁹

Such a broad application of EU fundamental rights to all actions of the Member States is to be rejected; in subjective systems of legal protection such as the German system, it would only be restricted in individual cases in the sense that an individual complaint could only be lodged when exercising the EU right to freedom of movement. This is because it contradicts the limited applicability of EU fundamental rights to Member State action *ratione materiae* [Art. 51(1) CFR], and the concept of subsidiarity and federal diversity of fundamental rights on which this

³⁸ See on the application of EU fundamental rights to the Member States when implementing or transposing EU secondary law only *CJEU*, C-540/03, *Parliament v. Council*, EU:C:2006:429, paras. 104 et seq. See in more detail Wollenschläger, Grundrechtsschutz (supra note 3), § 13, paras. 18 et seqq.

³⁹ AG *Jacobs*, in: *CJEU*, C-168/91, *Konstantinidis*, EU:C:1992:504, para. 46. Implicitly repealed by *idem* (2001). Human Rights in the European Union: The Role of the Court of Justice. *EL Rev.* 26 (4), 331–341 [335 et seqq.]. Concurring Harbacevica, S. and Reich, N. (2003). Citizenship and Family On Trial: A Fairly Optimistic Overview of Recent Court Practice With Regard to Free Movement of Persons. *CML Rev.* 40 (3), pp. 615–638 [634 et seq.]. A far-reaching concept is also proposed by AG Sharpston, in: *CJEU*, C-34/09, *Ruiz Zambrano*, EU:C:2011:124, para. 170.

limitation is based⁴⁰. There is therefore a need, as when applying EU fundamental rights to restrictions on fundamental freedoms by Member States⁴¹, for a strictly freedom of movement-orientated applicability of EU fundamental rights. This postulate appears to have been respected in the case at hand, where a close link to the right to freedom of movement can be reasoned to exist given its dependence on social assistance in order to realise it. It should nonetheless be concluded in general terms that it is not only in individual cases that difficult delimitation questions may arise with a view to a sufficient connection to freedom of movement and residence in order to trigger the applicability of the Charter, but that the *CJEU* has framed a potentially far-reaching obligation of the Member States to respect EU fundamental rights.

c) The foundation and content of the entitlement to social assistance as part of EU fundamental rights

In rem, the *CJEU* has first and foremost derived from the guarantee of human dignity provided in the very first article of the Charter of Fundamental Rights (Art. 1 CFR) an obligation incumbent on the host Member State “to ensure that a Union citizen who has made use of his or her freedom to move and to reside within the territory of the Member States, who has a right of residence on the basis of national law, and who is in a vulnerable situation, may nevertheless live in dignified conditions” (para. 89). It furthermore follows from Art. 7 CFR (Respect for private and family life) in conjunction with Art. 24(2) CFR (The rights of the child) that an obligation is incumbent on the host Member State “to permit children, who are particularly vulnerable, to stay in dignified conditions with the parent or parents responsible for them” (paras. 90 et seq.). This corresponds with entitlements to social benefits securing a minimum level of subsistence (para. 92). In contradistinction to the Opinion of Advocate General *de la Tour* (para. 103 footnote 89), the – particularly closely-related – fundamental right to social security and social assistance (Art. 34 CFR) is not mentioned⁴².

Such fundamental rights-related entitlements to social benefits securing a minimum level of subsistence are not unheard of if one for instance takes a look at the case-law of the German Federal Constitutional Court (*Bundesverfassungsgericht*)⁴³, but the problem of their being

⁴⁰ See also Wollenschläger, Grundrechtsschutz (supra note 3), § 13, paras. 38 et seqq.; *idem*, Anwendbarkeit (supra note 37), p. 580; further *idem*, Grundfreiheit (supra note 3), pp. 301 et seq.; moreover BVerfGE [collection of rulings of the German Federal Constitutional Court] 152, 152 (171 et seq.);

⁴¹ Wollenschläger, Grundrechtsschutz (supra note 3), § 13, paras. 38 et seqq.; *idem*, Anwendbarkeit (supra note 37), p. 580.

⁴² See, however, CJEU, C-571/10, *Kamberaj*, EU:C:2012:233, paras. 91 et seq.

⁴³ See only BVerfGE [collection of rulings of the German Federal Constitutional Court] 40, 121 (133 et seq.); E 125, 175 (222 et seq.); E 152, 68 (112 et seq., para. 118 et seq.).

derived from EU fundamental rights in the case at hand results from the fact that – on the basis of the judgment – they relate to a constellation in which the EU’s free movement regime, particularly because of the indigence of CG, grants neither a right of residence nor an entitlement to social assistance in the host Member State. This is also not changed by entrusting the concretisation of the entitlement to benefits to the national courts. The consequences of such entitlement for the Member States depend on the further concretisation of the framework stipulations of the *CJEU*⁴⁴.

A follow-up question arises with regard to the conformity of the rules of the EU free movement regime on job-seekers with EU fundamental rights. They also enjoy a right of residence – even, unlike CG, under the directive, and regardless of whether they meet economic conditions⁴⁵ –, but they are categorically excluded from social assistance in accordance with its Art. 24(2). In this constellation, given the judgment at hand, would the EU fundamental rights not be all the more applicable, so that the question arises as to the proportionality of the categorical exclusion? Presuming that CG started looking for work in order to at least partly earn her livelihood herself, would it not then be more difficult to justify exclusion than in the constellation ruled on, and would Art. 24(2) of Directive 2004/38/EC not thus be too strict?

III. Conclusion

The judgment proves to be ambivalent⁴⁶. On the one hand, the *CJEU* continues the restrictive approach of the *Dano* case by strictly applying the economic residence conditions for economically inactive persons, and namely disregarding the proviso of proportionality, whilst on the other hand the Court relativises this outcome by acknowledging a social EU fundamental right to benefits securing a minimum level of subsistence. This separation between the guarantee of freedom of movement under Union law and EU fundamental rights leaves the Member States entitled, contrary to an approach that integrates the examination of proportionality in the right of residence and entitlement to equal treatment, to decide autonomously on granting the latter in cases where economic residence conditions are not met; the obligation under EU fundamental rights to grant social benefits securing a minimum level of subsistence namely only applies where a right of residence has been granted beyond what is

⁴⁴ See for difficulties in that regard O’Brien, EU citizenship illusion (supra note 30), pp. 812 et seqq.

⁴⁵ See recently on this issue CJEU, C-710/19, *G. M. A. (Demandeur d’emploi)*, EU:C:2020:1037, paras. 21 et seqq. Fundamentally CJEU, C-292/89, *Antonissen*, EU:C:1991:80.

⁴⁶ See for a critical conclusion O’Brien, EU citizenship illusion (supra note 30), notably pp. 816 et seq.

required by Union law⁴⁷. Apart from sticking to the path embarked on with the Dano case (which however should be reconsidered), this opening up of leeway that is available to the Member States may have been the motivation behind the *CJEU*'s pursuance of the separation solution, as well as the fact that it led to no other outcome for the applicant, given the Member State granting a right of residence, on the one hand, and the entitlement to access to social benefits under EU fundamental rights, on the other, than a solution as suggested by Free Movement Directive 2004/38/EC, applying the proviso of proportionality. As has been pointed out, the objection to this approach is however that a proviso of proportionality is found in both primary and secondary law [Art. 7(1)(b) and Art. 14(3) of Directive 2004/38/EC], and that the *CJEU* has moreover used this as a basis in its rulings – prior and subsequently to the Dano case. A solution suggested by the directive would hence have been possible in the case at hand, and could above all be pursued in future cases. Given the non-consideration of the proviso of proportionality, the legal framework certainly remains highly unclear, and calls for clarification by the *CJEU*. What is more, particularly in view of the favourable solution which has been reached for the applicant, it remains to be seen what position the *CJEU* takes up should the question of the proportionality of denial of the right of residence arise. Irrespective of this, the *CJEU* has embarked on a path, by shifting the solution of the case at hand using as a basis social EU fundamental rights, which, as has also been shown, is potentially highly consequential, also beyond the topic focussed on here of the legal position of economically inactive persons in the EU's free movement regime⁴⁸, so that the question also arises as to whether this path preserves the Member States' leeway to a higher degree than does a solution suggested by Free Movement Directive 2004/38/EC.

⁴⁷ Specifically with regard to the Brexit context, and with reference to the inapplicability of the CFR after the end of the transition period Garner, O. (2021). Case C-709/20 CG v The Department for Communities in Northern Ireland: A Post-Brexit Swansong for the Charter of Fundamental Rights, <https://europeanlawblog.eu/2021/07/27/case-c-709-20-cg-v-the-department-for-communities-in-northern-ireland-a-post-brexit-swansong-for-the-charter-of-fundamental-rights> (29 December 2021); further O'Brien, EU citizenship illusion (supra note 30). For a comprehensive account of Brexit and free movement Kumin, A. J. and Schneider, S. (2021). Brexit und unionsrechtliche Freizügigkeit natürlicher Personen, in: Enzyklopädie Europarecht, in: Enzyklopädie Europarecht. Wollenschläger, F. (Ed.), Baden-Baden: Nomos, Vol. 10, § 14, pp.473–502.

⁴⁸ For a reserved assessment Haag, M. (2021). Case C-709/20 CG – The Right to Equal Treatment of Union citizens: Another Nail in the Coffin, <https://europeanlawblog.eu/2021/07/27/case-c-709-20-cg-the-right-to-equal-treatment-of-eu-citizens-another-nail-in-the-coffin/> (29 December 2021).