Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

16 January 2025 *

(Reference for a preliminary ruling – Citizenship of the Union – Article 21(1) TFEU – Right to move and reside freely within the territory of the Member States – Tax legislation – Income tax – Calculation of the amount of the basic personal allowance for a dependent child who has received mobility support for educational purposes in the context of the Erasmus+ programme – Regulation (EU) No 1288/2013 – Taxation of grants to support the mobility of individuals covered by that regulation – Restriction on freedom of movement – Proportionality)

In Case C-277/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Ustavni sud Republike Hrvatske (Constitutional Court, Croatia), made by decision of 18 April 2023, received at the Court on 28 April 2023, in the proceedings

E.P.

v

Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak,

THE COURT (Fifth Chamber),

composed of I. Jarukaitis, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias and Z. Csehi (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Croatian Government, by G. Vidović Mesarek, acting as Agent,

– by the European Commission, by B.-R. Killmann, M. Mataija, W. Roels and H. van Vliet, acting as Agents,

* Language of the case: Croatian.

after hearing the Opinion of the Advocate General at the sitting on 4 July 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 18, 20, 21 and the second indent of Article 165(2) TFEU and of Article 67 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).

2 The request has been made in proceedings between E.P. and the Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak (Ministry of Finance of the Republic of Croatia, Independent Sector for Second-Instance Administrative Procedure) ('the independent department responsible for the second-instance administrative procedure') concerning the taking into account by the tax authorities, for the purposes of calculating E.P.'s income tax allowance, of the support for learning mobility under the Erasmus+ programme received by her dependent child.

Legal context

European Union law

Regulation No 883/2004

3 Article 1(z) of Regulation No 883/2004 provides:

'For the purposes of this Regulation:

…

(z) "family benefit" means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.'

4 Article 3(1) of that regulation provides:

'This Regulation shall apply to all legislation concerning the following branches of social security:

…

(j) family benefits.'

5 According to Article 67 of that regulation, entitled 'Members of the family residing in another Member State':

'A person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they

were residing in the former Member State. However, a pensioner shall be entitled to family benefits in accordance with the legislation of the Member State competent for his/her pension.'

Regulation (EU) No 1288/2013

6 Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (OJ 2013 L 347, p. 50), which was in force at the time of the facts in the main proceedings, contained recital 40 which was worded as follows:

'In order to enhance access to the Programme, the grants to support the mobility of individuals should be adjusted to the living and subsistence costs of the host country. In accordance with national law, Member States should also be encouraged to exempt those grants from any taxes and social levies. The same exemption should apply to public or private bodies awarding such financial support to the individuals concerned.'

7 Article 6 of that regulation, entitled 'Actions of the Programme', provided in paragraph 1:

'In the field of education and training, the Programme shall pursue its objectives through the following types of actions:

(a) learning mobility of individuals;

…'

8 Article 18 of that regulation, entitled 'Budget', provided, in paragraph 7:

'The funds for the learning mobility of individuals referred to in point (a) of Article 6(1) and point (a) of Article 12 that are to be managed by a national agency or agencies (the "national agency") shall be allocated on the basis of population and cost of living in the Member State, distance between capitals of Member States and performance. The performance parameter shall account for 25% of the total funds according to the criteria referred to in paragraphs 8 and 9. As regards strategic partnerships referred to in point (a) of Article 8(1) and point (a) of Article 14(1) that are to be selected and managed by a national agency, the funds shall be allocated on the basis of criteria to be defined by the Commission in accordance with the examination procedure referred to in Article 36(3). Those formulae shall, as far as possible, be neutral with respect to the different education and training systems of the Member States, shall avoid substantial reductions in the annual budget allocated to Member States from one year to the next and shall minimise excessive imbalances in the level of grants allocated.'

National law

9 The Zakon o porezu na dohodak (Law on income tax) of 3 December 2004 (NN 177/04), in the version applicable to the dispute in the main proceedings ('the ZPD'), provides, in Article 6, that the income tax base is to be reduced by the personal allowance.

10 Under Article 10(13), (18) and (20) of the ZPD, the following are exempt from income tax:

‘13. scholarships intended for students in full-time education at higher educational institutions and universities, as well as for students undertaking doctoral and post-doctoral studies, for which funds are provided for in the State budget of the Republic of Croatia and scholarships paid from, that is to say awarded by, the EU budget, governed by specific international agreements and intended for students in full-time education in higher educational institutions;

…

18. scholarships intended for students selected in public competitions which all students may enter under identical conditions, for full-time education at higher educational institutions paid for, that is to say awarded, by foundations, establishments and other institutions registered in the Republic of Croatia for the purposes of education and training or scientific research, the operation of which is regulated by special provisions and which are established for the purpose of awarding scholarships,

…

20. amounts paid as grants from European Union funds and programmes through authorities accredited in accordance with EU regulations in the Republic of Croatia for the implementation of mobility actions under EU programmes and funds for education and further training purposes, in accordance with the Financial Regulation of the European Commission, up to the prescribed amounts’.

11 Article 36 of the ZPD provides:

‘(1) For residents, the total amount of income received in accordance with Article 5 of this law shall be reduced by a basic personal allowance of 2 200.00 [kuna (HRK) (approximately EUR 292)] for each month of the tax period for which the tax is assessed. …

(2) Residents may increase the basic allowance referred to in paragraph 1 of this article by the following amounts:

…

2. for dependent children: by 0.5 of the basic personal allowance for the first child, 0.7 for the second, 1.0 for the third, 1.4 for the fourth, 1.9 for the fifth and, for each additional child, the basic personal allowance factor is increased progressively by 0.6, 0.7, 0.8, 0.9, 1.0 … more than the basic personal allowance increase coefficient for the previous child.

…

(4) Members of the immediate family and dependent children refers to natural persons whose taxable income, exempt income and other amounts which, within the meaning of the present law, are not considered as income, do not exceed an amount corresponding to five times the basic personal allowance referred to in paragraph 1 of this article, on an annual basis.

(5) By way of derogation from paragraph 4 of this article, no account shall be taken, for the purposes of determining the right to deduct in respect of members of the immediate family and dependent children, of amounts paid under special provisions relating to social assistance, child allowances, new-born child support, namely sums intended for provisions for new-born children, or survivor's pensions paid out after the death of a parent. …'

12 Article 54 of the ZPD prescribes, for certain taxpayers residing in assisted regions and in the city of Vukovar (Croatia), such as the applicant in the main proceedings, a higher basic personal allowance than that referred to in Article 36(1) of the ZPD, which, at the time of the facts in the main proceedings, amounted to HRK 3 000, and consequently, under Article 36(2)(2) of the ZPD, an increase in the amount of the allowance for dependent children provided for in that provision.

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

13 The applicant in the main proceedings, a Croatian national, is liable to pay income tax and an income tax supplement as a special tax of a local authority. In view of her place of residence, she enjoys certain tax advantages provided for by the ZPD.

14 It is apparent from the order for reference that a dependent child of the applicant in the main proceedings received, in respect of the 2014/2015 academic year, support for learning mobility under the Erasmus+ programme for a period of study at a university in Finland and that, before his departure to that country at the end of 2014, he received an advance on that support in the amount of EUR 1 840.

15 For the tax periods preceding 2014, the applicant in the main proceedings received, pursuant to Article 36(2)(2) and Article 54(1)(2) of the ZPD, an increase in the basic personal allowance for a dependent child.

16 By a tax notice of 27 July 2015, the Porezna uprava Ministarstva financija Republike Hrvatske (Tax Office of the Ministry of Finance of the Republic of Croatia) informed the applicant in the main proceedings that she had to pay the tax concerned on the ground that the increase in the basic personal allowance in respect of her dependent child had been removed for the period from 1 January to 31 December 2014, since she had received, during that period, amounts higher than the threshold referred to in Article 36(4) of the ZPD, which had been exceeded as a result of the receipt, by that child, of mobility support under the Erasmus+ programme.

17 The applicant in the main proceedings lodged a complaint against that notice of assessment with the independent department responsible for the second-instance administrative procedure, claiming that she had been wrongly deprived, with respect to 2014, of the increase in the basic personal allowance for her dependent child. In her view, the mobility support paid to students for educational purposes under the Erasmus+ programme had to be classified as 'social assistance' and, consequently, in accordance with Article 36(5) of the ZPD, it should not be taken into account in determining the entitlement to the increase in the personal basic allowance in respect of dependent children.

18 By decision of 17 July 2019, the independent department responsible for the second-instance administrative procedure rejected that complaint as unfounded.

19 The applicant in the main proceedings brought an action against that decision before the Upravni sud Osijek (Administrative Court, Osijek, Croatia), which, by judgment of 30 January 2020, that court dismissed as unfounded.

20 The applicant in the main proceedings brought an appeal against that judgment before the Visoki upravni sud (Administrative Court of Appeal, Croatia), which dismissed it by judgment of 20 January 2021.

21 The applicant in the main proceedings lodged a constitutional appeal against that judgment before the referring court, the Ustavni sud Republike Hrvatske (Constitutional Court, Croatia). In support of her action, she relies, inter alia, on a ground alleging breach of the obligation laid down in the Constitution of the Republic of Croatia to protect her individual rights arising from EU law. More specifically, she argues that she has been discriminated against, in breach of Article 18 TFEU, and disadvantaged, in breach of Article 20(2)(a) and Article 21(1) TFEU, as a result of her dependent child exercising her right to move and reside in a Member State other than her Member State of origin for the purposes of education.

22 The referring court asks whether EU law is applicable to the situation of the applicant in the main proceedings and, more specifically, whether the national tax legislation at issue in the main proceedings is compatible with Articles 18, 20, 21 and Article 165(2) TFEU and with Article 67 of Regulation No 883/2004.

23 It also observes that it is apparent from the report of the Ombudsman of the Republic of Croatia for 2017 that the Ombudsman received, from Croatian universities, information according to which students interested in availing of the measures provided for in the Erasmus+ programme chose not to avail of those measures after learning that, according to the interpretation adopted by the Ministry of Finance of the Republic of Croatia, the receipt of support for learning mobility under the Erasmus+ programme would have the effect of depriving their parents of the entitlement to an increase in the basic personal allowance for dependent children, which led to a reduction in the number of applications from students interested in such measures.

24 In those circumstances, the Ustavni sud Republike Hrvatske (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Should Articles 18, 20, 21 and the second indent of Article 165(2) TFEU be interpreted as precluding legislation of a Member State under which a parent loses the right to increase the annual basic income tax allowance for a dependent child who, as a dependent student having exercised his or her right freely to move and reside in another Member State for the purpose of study, has availed himself or herself, on the basis of national implementing acts, of the measures provided for in Article 6(1)(a) of [Regulation No 1288/2013] for the purpose of facilitating mobility [of students] from a Member State with lower or middle average living costs to a Member State with higher average living costs, as determined according to the criteria of the European Commission set out in Article 18(7) of that regulation, when that child receives student mobility support which exceeds a certain fixed limit?

(2) Should Article 67 of [Regulation No 883/2004] be interpreted as precluding legislation of a Member State under which a parent loses the right to increase the annual basic income tax allowance for a dependent student who, while studying in another Member State, availed himself or herself of the student mobility support provided for in Article 6(1)(a) of [Regulation No 1288/2013]?’

Consideration of the questions referred

Admissibility

25 According to the Croatian Government, the questions referred for a preliminary ruling are inadmissible. It submits, in that regard, that while it is true that students are covered by EU law when they exercise their right to freedom of movement for the purpose of studies in a Member State other than their Member State of origin in the context of participation in the Erasmus+ programme, it cannot be inferred from this that that right also applies to their family members, including their parents. The tax situation of the applicant in the main proceedings and, in particular, the calculation of her income tax and the determination of her entitlement to the basic personal allowance are governed by national law and do not fall within the scope of EU law in the manner she claims. That is all the more so since the situation of the applicant in the main proceedings is purely internal in nature in view of her nationality, the fact that she works in Croatia, receives income there and has not personally exercised the freedom of movement or received support for learning mobility under the Erasmus+ programme.

26 In that respect, it should be noted that it is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the dispute in the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to those questions (see, inter alia, judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 35 and the case-law cited).

27 In the present case, the referring court sets out precisely the reasons which led it to take the view that an interpretation of EU law is necessary in order to give its decision and that the answers to the questions referred for a preliminary ruling are liable to affect the outcome of the dispute in the main proceedings. It considers that, in view of the subject matter of the action before it and in the absence of case-law of the Court of Justice on the discriminatory or disproportionate nature of national tax measures relating to student mobility under the Erasmus+ programme, it is required, inter alia, in order to give its decision, to determine whether the individual measures which are the subject of the action brought before it are contrary to Articles 18, 20, 21 and Article 165(2) TFEU.

28 Furthermore, a situation in which the question arises as to whether and, if so, to what extent, participation in a programme governed by EU law, such as the Erasmus+ programme, has an impact on the tax regime applicable to the taxpayer parent on whom the child who participated in that programme is dependent cannot be regarded as being ‘purely internal’ in nature, whether or not that situation is, in addition, governed by EU law. The assessment of the scope and modalities of that potential impact does not concern the admissibility of the questions referred but rather the substance of the case.

29 It follows that the questions referred for a preliminary ruling are admissible.

Substance

30 In its questions referred for a preliminary ruling, the referring court refers to several provisions of EU law and seeks to ascertain whether they preclude national legislation such as that at issue in the main proceedings.

31 As regards Article 67 of Regulation No 883/2004, it should be noted at the outset that that article is intended to determine the legislation of the Member State which governs the right to family benefits. As the Croatian Government and the Commission have argued, since the tax allowance at issue in the main proceedings is not a benefit in cash intended to meet family expenses, but rather a tax advantage which reduces, under certain conditions, the amount of income tax, that allowance does not constitute a family benefit within the meaning of Article 1(z) of Regulation No 883/2004. It follows that Article 67 of that regulation is not applicable in the context of the dispute in the main proceedings.

32 As regards Article 18 TFEU and, more specifically, the prohibition of discrimination on grounds of nationality referred to therein, it is apparent from the order for reference that the referring court considers, having regard, in particular, to the objectives of Regulation No 1288/2013, that the situation of the applicant in the main proceedings is not comparable, in general, to that of persons liable to income tax whose children have not exercised their right to freedom of movement nor, in particular, to that of such taxpayers whose children have support for learning mobility under the Erasmus+ programme for a university stay in Member States with similar or lower living costs. On the other hand, in the light of the fact that the child of the applicant in the main proceedings went, for the purposes of her university studies, to a Member State with higher living costs than those in Croatia, that court asks whether the non-application of the exception provided for in Article 36(5) of the ZPD with regard to the applicant in the main proceedings must be regarded as an unjustified restriction on the free movement of students under Articles 20 and 21 TFEU.

33 In those circumstances, it must be held that, by its questions, which must be considered together, the referring court asks, in essence, whether Articles 20 and 21 TFEU, read in the light of the second indent of Article 165(2) TFEU, are to be interpreted as precluding legislation of a Member State which, in order to determine the amount of the basic personal allowance to which a taxpayer parent is entitled in respect of his or her dependent child, takes into account the support for learning mobility which that child has received under the Erasmus+ programme, with the result, as the case may be, that that parent loses the entitlement to the increase of that allowance for the purposes of calculating income tax.

34 As a preliminary point, it must be borne in mind that, although, according to settled case-law, direct taxation falls within the competence of the Member States and although that law does not preclude, in principle, the Member States from taxing income financed by EU funds (see, to that effect, judgments of 14 February 1995, *Schumacker*, C-279/93, EU:C:1995:31, paragraph 21; of 7 September 2023, *Finanzamt G (Aid development projects)*, C-15/22, EU:C:2023:636, paragraph 64, and of 23 November 2023, *Ministarstvo financija*, C-682/22, EU:C:2023:920, paragraph 33), such taxation must be carried out in accordance with EU law, in particular the provisions of the TFEU concerning the freedom of every citizen of the Union to move and reside freely within the territory of the Member States (see, by analogy, judgment of 12 July 2005, *Schempp*, C-403/03, EU:C:2005:446, paragraph 19).

35 Those considerations also apply where, as in the present case, it is not a question, strictly speaking, of the taxation of income financed by EU funds, but of taking that income into account in the calculation of the income tax of a taxpayer whose dependent child has received such income.

36 In that regard, first, Article 20 TFEU confers on every individual who is a national of a Member State citizenship of the Union, 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 5 September 2023, *Udlændinge- og Integrationsministeriet (Loss of Danish nationality)*, C-689/21, EU:C:2023:626, paragraph 29).

37 As is apparent from the Court's case-law, a national of a Member State who has exercised, in his or her capacity as a Union citizen, his or her freedom to move and reside within a Member State other than his or her Member State of origin, may rely on the rights pertaining to Union citizenship, in particular the rights provided for in Article 21(1) TFEU, including, where appropriate, against his or her Member State of origin (judgment of 22 February 2024, *Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date*, C-491/21, EU:C:2024:143, paragraph 26 and the case-law cited).

38 Secondly, it should be noted that national legislation which places certain nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes a restriction on the freedoms conferred by Article 21(1) TFEU on every citizen of the Union (judgments of 18 July 2006, *De Cuyper*, C-406/04, EU:C:2006:491, paragraph 39, and of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraph 60).

39 The opportunities offered by the TFEU in relation to freedom of movement for citizens of the Union cannot be fully effective if a national of a Member State could be dissuaded from availing of them by obstacles resulting from his or her stay in another Member State because of legislation of his or her State of origin which penalises the mere fact that he or she has availed of those opportunities (see, to that effect, judgments of 29 April 2004, *Pusa*, C-224/02, EU:C:2004:273, paragraph 19, and of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraph 61).

40 That consideration is particularly important in the field of education in view of the aims pursued by Article 6(e) TFEU and the second indent of Article 165(2) TFEU, namely, inter alia, encouraging the mobility of students and teachers (judgments of 11 July 2002, *D'Hoop*, C-224/98, EU:C:2002:432, paragraph 32, and of 24 October 2013, *Thiele Meneses*, C-220/12, EU:C:2013:683, paragraph 24).

41 Furthermore, the Erasmus+ programme, like other EU action programmes in the field of education, is based on Articles 165 and 166 TFEU and is intended, inter alia, to promote student mobility within the European Union and to enable students to begin or pursue their studies in various Member States, irrespective of their place of origin, thereby strengthening the European dimension of education and training. The implementation of that objective is liable to be impeded, having regard to the economic means available to students and their parents, by the additional costs to which that mobility gives rise. The financial support provided through, inter alia, grants intended to support the mobility of the beneficiaries of that programme demonstrates the European Union's desire to help overcome those obstacles in a concrete and effective manner.

42 In that context, it should be noted that, in recital 40 of Regulation No 1288/2013, the EU legislature called on the Member States, in accordance with their national law, to exempt grants intended to support the mobility of the natural persons covered by that regulation from any taxes and social levies, without, however, imposing any specific obligation on the Member States as regards, inter alia, the calculation of the income tax of parents who are taxpayers, since direct taxation falls, in principle, within the competence of the Member States, as noted in paragraph 34 of the present judgment.

43 It is true that EU law offers no guarantee to a citizen of the Union that the exercise of his freedom of movement will be neutral as regards taxation. Given the disparities in the tax legislation of the Member States, exercising such freedoms may be more or less advantageous, or even disadvantageous, depending on the circumstances. That same principle applies a fortiori to a situation where the person concerned has not himself or herself made use of the right of movement, but claims to be the victim of less favourable treatment following the exercise of a family member's freedom of movement (see, to that effect, judgment of 12 July 2005, *Schempp*, C-403/03, EU:C:2005:446, paragraphs 45 and 46).

44 However, if a Member State participates in the Erasmus+ programme, it must ensure that the arrangements for the allocation and taxation of grants to support the mobility of beneficiaries of that programme do not create an unjustified restriction on the right to move and reside in the territory of the Member States (see, by analogy, judgments of 23 October 2007, *Morgan and Bucher*, C-11/06 and C-12/06, EU:C:2007:626, paragraph 28, and of 26 February 2015, *Martens*, C-359/13, EU:C:2015:118, paragraph 24).

45 In the present case, it is common ground that, first, the support for learning mobility under the Erasmus+ programme was not, as such, subject to taxation in Croatia at the time of the facts in the main proceedings, but was taken into account for the purposes of calculating the income tax of the applicant in the main proceedings. Secondly, the applicant in the main proceedings was placed at a disadvantage in so far as the national provisions at issue in the main proceedings were applied to her because her dependent child received such support.

46 Such provisions are thus liable to deter EU nationals from exercising their freedom to move and reside in a Member State other than their Member State of origin, in view of the impact that the exercise of that freedom may have on the calculation of the income tax of parents who are taxpayers, and are liable to undermine the mobility of students within the European Union in the context of the Erasmus+ programme.

47 Accordingly, the taking into account of the mobility support which a dependent child has received under the Erasmus+ programme for the purposes of determining the amount of the basic allowance to which a parent taxpayer is entitled in respect of that child, with the consequent loss of the entitlement to the increase in that allowance for the purposes of calculating income tax, is liable to constitute a restriction on the right to freedom of movement and residence enjoyed by citizens of the Union under Article 21 TFEU.

48 The existence of such a restriction cannot be called into question by the fact, first, that the dependent child who exercised his or her freedom of movement was not himself or herself the taxpayer who was deprived, in the context of the calculation of income tax, of his or her entitlement to the increase in the basic personal allowance for dependent children and, secondly, that the taxable parent thus disadvantaged has not exercised his or her freedom of movement.

49 Unfavourable tax consequences for a taxable parent with a dependent child who has exercised his freedom of movement constitute a restriction on freedom of movement within the meaning of Article 21 TFEU, where they result from the exercise of that freedom by that child. The fact that those unfavourable consequences have thus materialised not for the child who has exercised his or her right to free movement, but for that parent, whether or not that parent has exercised that right, is thus irrelevant for the purpose of establishing the existence of a restriction on freedom of movement under Article 21 TFEU.

50 In such circumstances, the effects of that restriction may be relied on not only by the Union citizen who has exercised his or her freedom of movement, but also by the Union citizen on whom, like the applicant in the main proceedings, that first citizen is dependent and who is therefore directly disadvantaged by the effects of that restriction.

51 In that regard, the Court has already acknowledged that, in certain circumstances, citizens of the Union who have not themselves exercised their freedom of movement and residence in a Member State other than their Member State of origin may rely on Article 21 TFEU and the provisions adopted for its application (see, to that effect, judgments of 12 July 2005, *Schempp*, C-403/03, EU:C:2005:446, paragraph 25; and of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraphs 42 and 43).

52 Ultimately, having regard to the economic links between the child and his parent – resulting in the present case not only from the fact that the child depends on his parent in order to meet his living and vocational training costs but also from the choice of the national legislature to take into account the income of the dependent child in the context of determining the tax situation of the taxpayer parent – it must be held that both the dependent child and the taxpayer parent may, in circumstances such as those of the case in the main proceedings, rely on Article 21 TFEU and the provisions adopted for its application.

53 Thirdly, it should be borne in mind that a restriction on the right to freedom of movement and residence, such as that noted in paragraph 47 of the present judgment, can be justified in the light of EU law only if it is based on objective considerations of public interest, independent of the nationality of the persons concerned, and if it is proportionate to the legitimate objective of the provisions of national law (judgment of 22 February 2024, *Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date*, C-491/21, EU:C:2024:143, paragraph 52 and the case-law cited).

54 As regards, in the first place, objective considerations of public interest capable of justifying the legislation at issue in the main proceedings, it is apparent from the request for a preliminary ruling that the provisions at issue in the main proceedings pursue, in accordance with the principles of equality and justice of the tax system and the sound management of limited public resources, an objective aimed at correcting, in the light of median income and average expenditure, the social and material inequalities between taxpayers with dependent children and those who do not incur expenses in connection with the maintenance of children.

55 Thus, according to the referring court, those provisions do not grant an entitlement to an increase in the basic personal allowance for taxpayers whose dependent children receive, in the course of a fiscal year, non-taxable income of a certain amount which, in the legislature's evaluation, enables the child to contribute to his or her maintenance from his or her own income and reduce the expenses incurred by his or her parents in the context of their maintenance obligations; they

grant such an entitlement only to taxpayers whose children do not receive non-taxable income – or who receive only a very small income – and who may therefore be maintained only by means of their parents' income.

56 It therefore appears that the national provisions at issue in the main proceedings are intended to take account of the real capacity of the taxpayer parents to pay income tax, in order to avoid the overestimation of that capacity, which must be regarded as constituting an objective in the public interest (see, by analogy, judgment of 21 December 2021, *Finanzamt V (Inheritance – Partial allowance and deduction of reserved portions)*, C-394/20, EU:C:2021:1044, paragraph 52).

57 As regards, in the second place, compliance with the principle of proportionality, legislation which is liable to restrict a fundamental freedom guaranteed by the Treaty, such as the right to freedom of movement and residence for citizens of the European Union, can be justified only if it is appropriate for securing the attainment of the legitimate objective which it pursues and if it does not go beyond what is necessary in order to attain it (see, to that effect, judgment of 18 January 2024, *JD (Residence requirement)*, C-562/22, EU:C:2024:55, paragraph 37 and the case-law cited).

58 It must also be pointed out in that regard that national legislation is appropriate for ensuring attainment of the objective relied on only if it genuinely reflects a concern to attain it in a consistent and systematic manner (see, to that effect, judgment of 18 January 2024, *JD (Residence requirement)*, C-562/22, EU:C:2024:55, paragraph 38 and the case-law cited).

59 In that regard, it should be noted that, in accordance with recital 40 of Regulation No 1288/2013, the grants to support the mobility of individuals covered by that regulation should be adjusted to the living and subsistence costs of the host country. Similarly, Article 18(7) of that regulation provided that the funds for the learning mobility of individuals referred to in Article 6(1)(a) and Article 12(a) of that regulation were to be allocated on the basis of population and cost of living in the Member State, distance between capitals of Member States and performance.

60 Consequently, as the Advocate General observed in points 49 to 52 and 77 of his Opinion, it must be considered that, since the objective of the Erasmus+ programme is to promote student mobility for the purposes of education, in particular in the context of university education, and taking into account the level of the amounts of support for learning mobility under that programme and the actual cost of living in the host Member State, that support is supposed to contribute to covering the additional costs which would not have arisen in the absence of that mobility.

61 Consequently, the receipt of such support does not lead to a reduction in the expenditure of taxpayer parents in the context of their maintenance obligations towards their dependent children, nor does it increase those parents' capacity to pay tax.

62 The tax treatment of support for learning mobility under the Erasmus+ programme at issue in the main proceedings is therefore not capable of taking into account, in a consistent and systematic manner, the real capacity to pay income tax of taxpayer parents with a dependent child participating in that programme. Since that treatment is liable to lead to a heavier tax burden for those taxpayer parents, without the resources available to them having been increased to meet that burden, the national legislation at issue in the main proceedings may even have the opposite effect.

63 In the light of the foregoing considerations, the answer to the questions referred is that Articles 20 and 21 TFEU, read in the light of the second indent of Article 165(2) TFEU, must be interpreted as precluding legislation of a Member State which, in order to determine the amount of the basic personal allowance to which a taxpayer parent is entitled in respect of his or her dependent child, takes into account the support for learning mobility which that child has received under the Erasmus+ programme, with the result, as the case may be, that that parent loses the entitlement to the increase of that allowance for the purposes of calculating income tax.

Costs

64 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 (Fifth Chamber) hereby rules:

Articles 20 and 21 TFEU, read in the light of the second indent of Article 165(2) TFEU, must be interpreted as precluding legislation of a Member State which, in order to determine the amount of the basic personal allowance to which a taxpayer parent is entitled in respect of his or her dependent child, takes into account the support for learning mobility which that child has received under the Erasmus+ programme, with the result, as the case may be, that that parent loses the entitlement to the increase of that allowance for the purposes of calculating income tax.

[Signatures]