ECLI:EU:C:2017:407

Provisional text

OPINION OF ADVOCATE GENERAL

BOT

delivered on 30 May 2017 (1)

Case C-165/16

Toufik Lounes

v

Secretary of State for the Home Department

(Request for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), United Kingdom)

(Reference for a preliminary ruling — Citizenship of the Union — Article 21 TFEU — Directive 2004/38/EC — Beneficiaries — Union citizen having acquired the nationality of the host Member State while retaining her nationality of origin — Effects of acquisition by the Union citizen of the nationality of the host Member State on entitlement to the rights conferred by Directive 2004/38 — Right of residence in that Member State of a family member of that citizen who is a third-country national)

I. **Introduction**

1. May a Union citizen, having exercised her rights of free movement and residence in accordance with Directive 2004/38/EC (2) and having subsequently acquired the nationality of the host Member State, still rely, for her own benefit and/or for the benefit of her spouse, a third-country national, upon the rights and freedoms conferred by that directive in the light of its scope *ratione personae*?

2. That is in essence the question raised by this reference for a preliminary ruling.

3. The question arises in so far as, under Article 3(1) of Directive 2004/38, 'all Union citizens who move to or reside in a Member State *other than that of which they are a national*, and ... their family members, ... who accompany or join them' are 'beneficiaries' of the rights conferred by that directive. (3)

4. The Court is therefore asked whether acquisition by Union citizens of the nationality of the Member State to which they have moved and in which they have resided in accordance with the directive could deprive them, and their spouses who are third-country nationals, of the rights which they previously acquired under that directive and to which they were fully entitled up to that point.

5. That is the position taken by the Secretary of State for the Home Department (United Kingdom) in the present case and advocated by the United Kingdom.

6. In the proceedings between her and Toufik Lounes, an Algerian national, the Secretary of State for Home Department refused his application for a residence permit on the ground that his spouse, a Union citizen, has become a naturalised British citizen, which now excludes her from the scope *ratione personae* of Directive 2004/38.

7. The situation in this case is unprecedented but, as the referring court states, it is a test case in the United Kingdom. (4)

8. The judgment to be given will not dispel all the difficulties raised by the scope *ratione personae* of the directive. It will first be of practical importance, because there may frequently be situations in which Union citizens wish to be naturalised in the host Member State, and then of theoretical importance, because the decision will contribute, in the extending of the Court's case-law, to the development of the status of Union citizen.

9. In this regard, the judgment of 12 March 2014, *O. and B.*, (5) in which the Court interpreted the scope *ratione personae* of the directive, to my mind sheds light on the reasoning that the Court intends to follow in a case such as that at issue and thus allows a framework for interpretation to emerge that will be helpful for the answer to be given to referring court in the present case.

10. In this Opinion, I shall therefore explain the reasons why Union citizens who, like Ms Perla Nerea García Ormazábal in the present case, have acquired the nationality of the Member State to which they have moved and in which they have resided on the basis of Directive 2004/38 no longer fall within the definition of 'beneficiaries' within the

meaning of Article 3(1) of that directive, with the result that the directive is not applicable either to them or to members of their family who are third-country nationals.

11. I shall nevertheless show that the effectiveness of the rights conferred by Article 21(1) TFEU demands that, in situations like that at issue, Union citizens who have acquired the nationality of the Member State in which they have genuinely resided, pursuant to and in conformity with the conditions set out in Article 16 of the directive and have during that period created a family life with a third-country national may not be afforded treatment less favourable than they enjoyed in that State under Directive 2004/38 before their naturalisation and than they would be granted under EU law if they moved to another Member State.

II. Legislative framework

A. EU law

1. The provisions of the FEU Treaty

12. Under Article 21(1) TFEU, '[e]very EU citizen shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect'.

2. Directive 2006/38

13. Article 1 of Directive 2006/38 provides:

'This Directive lays down:

(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;

(b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;

...'

14. Under Article 2 of that directive:

'For the purpose of this Directive:

1) "Union citizen" means any person having the nationality of a Member State;

2) "Family member" means:

(a) the spouse;

...

3. "Host Member State" means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.'

15. Article 3 of Directive 2004/38, which is entitled 'Beneficiaries', provides in paragraph 1:

'This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.'

16. Article 16 of the directive, which is entitled 'General rule for Union citizens and their family members', states:

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

2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.

...'

B. United Kingdom law

17. Directive 2004/38 was transposed into United Kingdom law by the Immigration (European Economic Area) Regulations 2006 (2006/1003) ('the EEA Regulations 2006'). The EEA Regulations 2006 uses the term 'EEA national' in place of 'Union citizen'.

18. In its original version, regulation 2 of the EEA Regulations 2006 defined 'EEA national' as 'a national of an EEA State', it being specified that the United Kingdom was excluded from the definition of 'EEA State'.

19. Following two successive amendments, (6) regulation 2 of the EEA Regulations 2006 now provides as follows:

'"EEA national" means a national of an EEA State who is not also a British citizen'.

20. Regulations 6, 7, 14 and 15 of the EEA Regulations 2006 transpose Articles 2, 7 and 16 of Directive 2004/38, reproducing their substance.

III. Facts and the question submitted for a preliminary ruling

21. Ms García Ormazábal, a Spanish national, moved to the United Kingdom in September 1996 to study before being employed full-time at the Turkish Embassy in London from September 2004. On 12 August 2009, she became a naturalised British citizen and was issued with a British passport, while also retaining her Spanish nationality.

22. Mr Lounes, an Algerian national, entered the United Kingdom on a six-month visitor visa on 20 January 2010 and overstayed illegally in British territory. Ms García Ormazábal began a relationship with Mr Lounes in 2013. Ms García Ormazábal and Mr Lounes married in a religious ceremony on 1 January 2014, and then in a civil ceremony in London on 16 May 2014. Since then they have resided in the United Kingdom.

23. On 15 April 2014, Mr Lounes applied to the Secretary of State for the Home Department for the issue of a residence card as a family member of an EEA national pursuant to the EEA Regulations 2006, which transpose Directive 2004/38 into United Kingdom law.

24. On 14 May 2014, he was served with a notice, together with a decision to remove him from the United Kingdom, on the grounds that he had overstayed in that State in breach of immigration controls.

25. In addition, by letter of 22 May 2014, the Secretary of State for the Home Department informed Mr Lounes that his application for a residence card had been refused. The letter stated that, following the amendment of regulation 2 of the EEA Regulations 2006 by EEA Regulations 2012/1547 and 2012/2560, Ms García Ormazábal was no longer regarded as an 'EEA national' because she had acquired British nationality on 12 August 2009, even though she had also retained her Spanish nationality. She was therefore no longer entitled to the rights conferred by the EEA Regulations 2006 and by Directive 2004/38 in the United Kingdom. Consequently, Mr Lounes could not claim a residence card as a family member of an EEA national under that regulation.

26. According to the order for reference, British citizens who were also nationals of another EEA Member State were previously considered to be EEA nationals within the meaning of regulation 2 of the EEA Regulations 2006 and were therefore entitled to the rights conferred by that regulation. That is no longer the case since the amendment came into force. Mr Lounes therefore brought a claim before the referring court against the abovementioned decision of 22 May 2014.

27. The referring court expresses doubts as to the compatibility with EU law, and in particular with Article 21 TFEU and Directive 2004/38, of regulation 2 of the EEA Regulations 2006, as amended by EEA Regulations 2012/1547 and 2012/2560.

28. It states in this regard that that amendment followed the judgment of 5 May 2011, *McCarthy*, (7) in which the Court ruled that Directive 2004/38 was not applicable to a Union citizen who had never exercised his right of free movement, had always resided in

a Member State of which he was a national and was, in addition, a national of another Member State.

29. In the present case, it is common ground that, before obtaining British nationality, Ms García Ormazábal had exercised her freedom of movement and acquired a right of residence in the United Kingdom as a Spanish national under Directive 2004/38.

30. Against this background, the referring court therefore asks whether, as the Secretary of State for the Home Department claims, Ms García Ormazábal and her family member lost entitlement to the rights conferred by the directive in the United Kingdom from the date on which she became naturalised in that Member State or whether, as Mr Lounes asserts, even though she has become a British national, Ms García Ormazábal must still be considered a 'beneficiary' within the meaning of Article 3(1) of the directive, with the result that she and the family member who accompanies her may still rely upon the rights guaranteed by that legislation. The referring court also asks whether the answer to this question could be different depending on whether Ms García Ormazábal held a right of residence for more than three months granted pursuant to Article 7 of Directive 2004/38 or a right of permanent residence in the United Kingdom based on Article 16 of that directive.

31. In those circumstances, the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) (United Kingdom) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Where a Spanish national and Union citizen:

i. moves to the United Kingdom, in the exercise of her right to free movement under Directive 2004/38; and

ii. resides in the United Kingdom in the exercise of her right under Article 7 or Article 16 of that directive; and

iii. subsequently acquires British citizenship, which she holds in addition to her Spanish nationality, as a dual national; and

iv. several years after acquiring British citizenship, marries a third-country national with whom she resides in the United Kingdom;

are she and her spouse both beneficiaries of the directive, within the meaning of Article 3(1), whilst she is residing in the United Kingdom, and holding both Spanish nationality and British citizenship?'

IV. Analysis

32. By its question, the referring court asks the Court whether Union citizens who, like Ms García Ormazábal, have acquired the nationality of the Member State in which they

have genuinely and permanently resided in accordance with Article 16 of Directive 2004/38, fall within the definition of 'beneficiaries' within the meaning of Article 3(1) of that directive, with the result that their spouse, who is a third-country national, may effectively claim a derived right of residence in that State.

33. The Court is therefore asked, in essence, whether, on the basis of the provisions of EU law, a Member State is entitled to refuse a third-country national, a family member of a Union citizen, the right of residence if that Union citizen, after exercising her rights of free movement and residence in accordance with Directive 2004/38, has acquired the nationality of that State, while retaining her nationality of origin.

34. Before beginning to examine this question, a preliminary remark should be made.

35. It would seem important to note that, contrary to what the United Kingdom Government would seem to suggest, the situation at issue cannot be put on the same footing as a purely domestic situation. Although Ms García Ormazábal is now a British national, recognition of a right of residence for her spouse, a third-country national, does not fall solely within the ambit of its national legislation.

36. First, in a situation such as that at issue, the connecting factor with EU law, and with the provisions of Directive 2004/38 in particular, is obvious.

37. It was by virtue of the actual exercise of her rights of free movement and residence that Ms García Ormazábal was entitled to a right of permanent residence in the United Kingdom and it was on the basis of that permanent and regular residence permit, issued pursuant to Article 16 of the directive, that she acquired British nationality in accordance with the legislation of that State. (8)

38. There is therefore an inextricablelink between the exercise of the rights conferred on Ms García Ormazábal by the directive and her acquisition of British nationality. Consequently, I consider that the United Kingdom may not now, solely on the grounds that she has been naturalised in that State, disregard the rights which she has exercised on the basis of EU secondary law, just as it may not disregard the fact that she has retained her nationality of origin, that is, Spanish nationality.

39. It is thus clear that the situation of Union citizens who, like Ms García Ormazábal, are placed by reason of their naturalisation in a situation liable to entail the loss of the rights conferred by Directive 2004/38, falls, because of its nature and its consequences, within the ambit of EU law.

40. Second, it is to be borne in mind that if, under international law, it is indeed for each Member State to lay down the conditions for the acquisition and loss of nationality, it is nevertheless settled case-law that that competence must be exercised having due regard to EU law. (9) The Court thus ruled in the case giving rise to the judgment of 2 March 2010, *Rottmann*, (10) concerning a decision withdrawing naturalisation, that when that competence is exercised in respect of a Union citizen and affects the rights

conferred and protected by the legal order of the Union, it is amenable to judicial review carried out in the light of EU law.

41. Consequently, the fact that a matter falls within the competence of the Member States does not, in a situation like that at issue manifestly falling under EU law, preclude the requirement that the national rules in question must have due regard to EU law.

42. That having been said, it is now necessary to examine the question asked by the referring court.

43. In order to examine the question, it must first be analysed whether Ms García Ormazábal can fall within the scope of Directive 2004/38, as a 'beneficiary', within the meaning of Article 3(1) of that directive, of rights conferred by it.

44. This initial analysis must be conducted in order to determine whether a third-country national such as her spouse — who is certainly a member of her family for the purpose of Article 2(2)(a) of the directive — can enjoy a derived right of residence based on Directive 2004/38.

45. It should be recalled that the directive confers no autonomous right on third-country nationals. (11) According to settled case-law, any rights granted to third-country nationals by the provisions of EU law on citizenship of the Union are not autonomous rights of those nationals, but rights derived from the exercise of freedom of movement and residence by a Union citizen. Thus, a derived right of residence of a third-country national exists, in principle, only when it is necessary in order to ensure that a Union citizen can exercise effectively his rights to move and reside freely in the European Union. (12)

46. If these two persons should be considered not to be, or no longer to be, 'beneficiaries' of the rights conferred by the directive within the meaning of Article 3(1) thereof, it would then have to be determined whether Mr Lounes is nevertheless entitled to a derived right of residence based directly on the provisions of the FEU Treaty on citizenship of the Union.

A. The status of Ms García Ormazábal as a 'beneficiary' within the meaning of Article 3(1) of Directive 2004/38

47. Under Article 3(1) of the directive, 'all Union citizens who move to or reside in a Member State *other than that of which they are a national*, and ... their family members ... who accompany or join them' are 'beneficiaries' of the rights conferred by the directive. (13)

48. That provision thus makes nationality a determining criterion for the scope *ratione personae* of the directive, so that acquisition by Ms García Ormazábal of the nationality of the host Member State clearly gave rise to a change in the legal rules applicable to her. It is upon those grounds that the United Kingdom relies in order to demonstrate that, by

reason of her naturalisation, Ms García Ormazábal can no longer fall within that definition.

49. While it is clear that Ms García Ormazábal fell within the scope of Directive 2004/38 when she exercised her freedom of movement by leaving Spain, her Member State of origin, to move to the United Kingdom in September 1996 in order to reside there, first as a student and then as an employee at the Turkish Embassy, (14) the fact that on 12 August 2009 she acquired the nationality of the host Member State in which she had resided for a continuous period since 1996 now excludes her from the scope *ratione personae* of the directive.

50. While it is true that, according to settled case-law, the provisions of the directive must not be interpreted strictly, the fact remains that the wording of Article 3(1) of the directive, as interpreted by the Court, does limit its scope *ratione personae* to Union citizens who reside in a Member State other than that of which they are nationals.

51. Extending the scope *ratione personae* of the directive to a Union citizen who, like Ms García Ormazábal, has acquired the nationality of the host Member State would therefore lead to departing from the very wording of Article 3(1) of Directive 2004/38 and from the Court's firmly established case-law.

52. Reference should be made to the Court's interpretation of the scope *ratione personae* of the Directive in *O. and B.*, which, in my view, sheds light on the reasoning that the Court intends to follow in situations like that at issue and offers guidance for the answer to the question asked by the referring court.

53. That case concerned the refusal by the Dutch authorities to grant Mr O. (15) and Mr B. (16) a certificate of lawful residence in the Netherlands as a family member of a Union citizen, who, after exercising her right of free movement on the basis of Article 21(1) TFEU, had returned to her Member State of origin.

54. The referring court asked the Court, in particular, whether Directive 2004/38 and Article 21(1) TFEU should be interpreted as precluding a Member State from refusing such a right of residence.

55. Following in the line of the judgments of 7 July 1992, *Singh*, (17) and of 11 December 2007, *Eind*, (18) the Court set out the conditions on which third-country nationals who are family members of a Union citizen are entitled, under EU law, to a derived right of residence in order to reside with that Union citizen in the Member State of which that citizen is a national.

56. The Court found that Directive 2004/38 was not applicable, ruling that a third-country national who is a family member of a Union citizen may not, on the basis of that directive, invoke a derived right of residence in the Member State of which that citizen is a national. (19)

57. In doing so, the Court relied upon a literal, systematic and teleological interpretation of the directive.

58. The provisions of Article 3(1) of Directive 2004/38, like the wording of Article 6, Article 7(1) and (2) and Article 16(1) and (2) of the directive — which regulate the right of residence of a Union citizen and the derived right of residence of family members of that citizen either in 'another Member State' or in 'the host Member State' — do indeed confirm that those provisions govern the legal situation of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national. (20)

59. In addition, the purpose of the directive shows that the directive is not intended to apply to a Union citizen who enjoys an unconditional right of residence because he resides in the Member State of which he is a national.

60. As is apparent from Article 1(a) of the directive, the object of the directive is only to lay down the conditions governing the exercise of the right of free movement and residence within the territory of the Member States. (21) Inasmuch as, in accordance with a principle of international law, a Member State's own nationals are entitled to an unconditional right of residence in their State under national law — since that State cannot refuse them the right to enter its territory and remain there (22) — the Court consequently held that 'Directive 2004/38 is intended only to govern the conditions of entry and residence of a Union citizen in a Member State *other than the Member State of which he is a national*'. (23)

61. Thus, if acquisition of the nationality of the host Member State is, in my view, part of the further integration of the Union citizen in that State, which is the aim of the directive, it must nevertheless be stated that, having regard to the scope *ratione personae* of the directive, this alteration of civil status excludes the Union citizen *ipso facto* from entitlement to the rights conferred by the directive.

62. Paradoxical as this may seem, the fact remains that extending the scope *ratione personae* of the directive to a Union citizen who, like Ms García Ormazábal, has acquired the nationality of the host Member State would lead to departing from the very wording of Article 3(1) of Directive 2004/38 and from the Court's firmly established case-law.

63. It must therefore be acknowledged that, in spite of the clear link between the exercise of the rights conferred by the directive on Ms García Ormazábal and her acquisition of British nationality, her legal situation has been profoundly altered, both in EU law and in national law, on account of her naturalisation.

64. In so far as Ms García Ormazábal no longer falls within the definition of a 'beneficiary' within the meaning of Article 3(1) of the directive, nor can her spouse be considered such, given that, as I have stated, (24) the rights granted by the directive to family members of a beneficiary are not autonomous rights, but merely rights derived from those enjoyed by the Union citizen.

65. In the light of these considerations, Union citizens having acquired the nationality of the Member State in which they have genuinely and permanently resided pursuant to Article 16 of Directive 2004/38 do not fall within the definition of 'beneficiaries' within the meaning of Article 3(1) of the directive, with the result that the directive is not applicable either to them or to members of their family.

66. This means that third-country nationals in a situation like that of Mr Lounes are not entitled, on the sole basis of the provisions of Directive 2004/38, to a derived right of residence in the Member State of which their spouse is now a national, in this case the United Kingdom.

67. That does not mean, however, that they cannot obtain a derived right of residence on the basis of the provisions of the Treaty, and Article 21(1) TFEU in particular.

B. The existence of a derived right of residence based on Article 21(1) TFEU

68. It should be recalled that under Article 21(1) TFEU, and subject to its implementing measures, Member States must permit Union citizens who are not their nationals to move and reside within their territory with their spouse and, possibly, certain members of their family who are not Union citizens.

69. This provision is given an extremely dynamic interpretation by the Court in situations in which, by reason of the return of Union citizens to their Member State of origin, Directive 2004/38 is no longer applicable to them, with the result that neither they nor their family members are any longer entitled to the rights conferred by the directive.

70. In order to ensure the effectiveness of Article 21(1) TFEU in such situations, the Court applies the provisions of Directive 2004/38 by analogy.

71. In *O. and B.*, the Court establishes the principle of a right for the Union citizen to return to his Member State of origin, in respect of which the conditions for granting in that State a derived right of residence to the third-country national who is a member of his family may not be stricter than those provided for by that directive.

72. It is genuine residence in the host Member State of the Union citizen and of the family member who is a third-country national, pursuant to and in conformity with the conditions set out in Article 7(1) and (2) and Article 16 of Directive 2004/38 respectively, that creates, on the Union citizen's return to his Member State of origin, a derived right of residence, on the basis of Article 21(1) TFEU, for the third-country national with whom that citizen led a family life in the host Member State. The Court seeks to avoid any form of obstacle that could inhibit the fundamental right to free movement guaranteed by EU law by ensuring that the conditions for granting that right of residence in the Member State of origin of the Union citizen are not stricter than those provided for by Directive 2004/38 for the grant of such a derived right of residence to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of

movement by becoming established in a Member State other than the Member State of which he is a national.

73. The Court relied here upon the principles it had previously identified in the judgments of 7 July 1992, *Singh*, (25) and of 11 December 2007, *Eind*. (26)

74. Those two cases concerned Union citizens who, after exercising their rights to move and reside freely in the Union, returned to their Member State of origin to reside there.

75. Even though Directive 2004/38 was not applicable, the Court ruled that, when the Union citizen has exercised his freedom of movement and returns to the Member State of which he is a national, his spouse, who is a third-country national, must be entitled to a derived right of residence in the latter State in conditions 'at least equivalent to those which he would enjoy under the Treaty or secondary law in the territory of another Member State'. (27) He must thus enjoy at least the same rights of entry and residence as would be granted to him under EU law if the citizen in question chose to enter and reside in another Member State.

76. These two judgments show in essence that when, after moving to and residing in another Member State, Union citizens return to the Member State of which they are a national, the latter Member State may not grant its own nationals and family members who accompany or join them less favourable treatment than was applicable to them in the host Member State.

77. The *ratio decidendi* for this approach was that if the third-country national had no such right, the worker, a Union citizen, could be deterred from leaving the Member State of which he is a national in order to pursue gainful employment in another Member State if there was no certainty that that worker would be able, on returning to his Member State of origin, to continue a family life that may have come into being in the host Member State as a result of marriage or family reunification. (28) The idea was thus established that in such circumstances there could be a form of obstacle to leaving the Member State of origin.

78. In *O. and B.*, the Court transposes this analysis *mutatis mutandis*. (29) In order to avoid such a form of obstacle, which could inhibit the fundamental right to free movement guaranteed by EU law, the Court establishes the principle of a right to return to the Member State of origin, in respect of which the conditions for granting in that State a derived right of residence to the third-country national who is a member of his family may not be stricter than those provided for by Directive 2004/38.

79. The solution adopted by the Court in *O. and B.*, inasmuch as it seeks to apply the provisions of Directive 2004/38 *mutatis mutandis* when Union citizens return to the Member State of which they are nationals, seems to me to be transposable to the present case.

80. It is true that there are factual differences between that case and the case before the Court.

81. In the case giving rise to the judgment in *O. and B.*, the Union citizen left the host Member State to return to his Member State of origin.

82. In a situation such as that at issue, Ms García Ormazábal has not in fact left the host Member State, for she resides there and has chosen to acquire the nationality of that State. Therefore, there has been no physical movement.

83. However, it would seem that the two cases are similar in so far as, by choosing to be naturalised in the host Member State, Ms García Ormazábal expressed her wish to live in that State in the same way as she would be prompted to live in her Member State of origin, building strong, lasting ties with the host Member State and becoming permanently integrated in that State. Consequently, I think that a parallel can be drawn between the Court's reasoning in *O. and B.* and the reasoning which it is prompted to follow in the present case.

84. In a situation such as that at issue, moreover, I think that it is even more necessary for the provisions of Directive 2004/38 to be transposed *mutatis mutandis* because, as has been shown, there is an inextricable link between the exercise of the rights conferred by that directive on Ms García Ormazábal when she moved to and resided in the United Kingdom and her acquisition of British nationality. It should be recalled that it was actually on the basis of the permanent residence permit granted by Article 16 of the directive that she acquired British nationality in accordance with the national legislation applicable.

85. Ms García Ormazábal thus took her integration in the host Member State to its logical conclusion by requesting her naturalisation in accordance with the objective pursued by the Union legislature not only in Article 21(1) TFEU, but also in Directive 2004/38, recital 18 of which seeks to make the permanent residence permit a 'genuine vehicle for integration' for the person concerned into the society of the host Member State. (30) Her residence pursuant to and in conformity with the conditions set out in Article 16 of the directive is clear evidence of genuine residence and goes hand in hand with creating and strengthening family life in that Member State. (31)

86. To deprive her henceforward of the rights to which she has till now been entitled in respect of the residence of her family members because, by being naturalised, she has sought to become more deeply integrated in the host Member State, would annihilate the effectiveness of the rights which she derives from Article 21(1) TFEU.

87. Such a solution would, in my view, be illogical and full of contradictions.

88. The deeper integration which Ms Ormazábal desired in the host Member State by becoming naturalised would ultimately deprive her of the rights granted to her in respect of her spouse by EU law, which would manifestly be likely to harm her pursuit of family

life in that State and thus, in the end, the integration which she has sought. What is given with one hand would therefore be taken away with the other.

89. To continue the family life which she has started, she would then be forced to leave that State to move to another Member State in order to be able to claim once again the rights conferred by Directive 2004/38 and, in particular, the possibility of residing with her spouse.

90. Consequently, in these circumstances, I think that the effectiveness of the rights conferred by Article 21(1) TFEU demands that Union citizens, such as Ms García Ormazábal, who have acquired the nationality of the host Member State following and by reason of residence under and in conformity with the conditions set out in Article 16 of the directive, should be able to continue the family life they have until then led in that State with their spouse, a third-country national. The treatment afforded to Ms García Ormazábal may not be less favourable than that accorded to her under the directive before her naturalisation or than would be granted to her by EU law if she in the end moved to another Member State.

91. In the light of these considerations, I therefore consider that Article 21(1) TFEU must be interpreted as meaning that, in situations like that at issue, in which Union citizens have acquired the nationality of the Member State in which they have genuinely resided pursuant to and in conformity with the conditions set out in Article 16 of Directive 2004/38 and have during that period created a family life with a third-country national, the conditions for granting a derived right of residence to the third-country national in that State should not, in principle, be stricter than those provided for by that directive for the grant of a derived right of residence to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national.

92. Inasmuch as Mr Lounes may not, to my mind, be denied a derived right of residence on the basis of Article 21(1) TFEU, I do not think it necessary to consider whether a Union citizen like Ms García Ormazábal could rely in this regard upon the provisions of Article 20 TFEU, the effectiveness of the citizenship of the Union to which she is entitled being, in my view, safeguarded.

V. Conclusion

93. In the light of the above considerations, I propose that the Court answer the question asked by the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) (United Kingdom) as follows:

1. Union citizens who have acquired the nationality of the Member State in which they have genuinely and permanently resided pursuant to Article 16 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the

Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC do not fall within the definition of 'beneficiaries' within the meaning of Article 3(1) of that directive, with the result that the directive is not applicable either to them or to members of their family.

2. Article 21(1) TFEU is to be interpreted as meaning that, in situations such as that at issue, in which Union citizens have acquired the nationality of the Member State in which they have genuinely resided pursuant to and in conformity with the conditions set out in Article 16 of Directive 2004/38 and have during that period created a family life with a third-country national, the conditions for granting a derived right of residence to the third-country national in that State should not, in principle, be stricter than those provided for by that directive for the grant of a derived right of residence to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national.

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1 Original language: French.

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2 Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, 'Directive 2004/38' or 'the Directive').

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3 Italics added.

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4 See paragraph 65 of the request for a preliminary ruling.

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5 Judgment of 12 March 2014, *O. and B.* (C-456/12, 'judgment *O. and B.*', EU:C:2014:135); the principles of this judgment were recalled in judgment of 10 May 2017, *Chavez-Vilchez and Others* (C-133/15, EU:C:2017:354).

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6 Those amendments were introduced by the Immigration (European Economic Area) (Amendment) Regulations 2012 (2012/1547), ('the EEA Regulations 2012/1547'), then by the Immigration (European Economic Area) (Amendment) (No 2) Regulations 2012 (2012/2560), ('the EEA Regulations 2012/2560').

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7 C-434/09, EU:C:2011:277, paragraph 43.

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8 This was confirmed by the UK Government in its written submissions.

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9 See judgments of 7 July 1992, *Micheletti and Others* (C-369/90, EU:C:1992:295, paragraph 10); of 11 November 1999, *Mesbah* (C-179/98, EU:C:1999:549, paragraph 29); of 20 February 2001, *Kaur* (C-192/99, EU:C:2001:106, paragraph 19); of 19 October 2004, *Zhu and Chen* (C-200/02, EU:C:2004:639, paragraph 37); and of 2 March 2010, *Rottmann* (C-135/08, EU:C:2010:104, paragraph 39).

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10 C-135/08, EU:C:2010:104, paragraph 48.

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11 See judgment in *O. and B.*, paragraph 36 and the case-law cited.

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12 See, to that effect, judgment of 13 September 2016, *Rendón Marín* (C-165/14, EU:C:2016:675, paragraph 36 and the case-law cited).

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13 Italics added.

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14 Her situation thus differs from those at issue in the cases which gave rise to the judgments of 5 May 2011, *McCarthy* (C-434/09, EU:C:2011:277), and of 8 May 2013, *Ymeraga and Others* (C-87/12, EU:C:2013:291), in which Union citizens had never exercised their right of free movement and had always resided in the Member State of which they were nationals.

15 Mr O., a Nigerian national, had married a Netherlands national in 2006, with whom he had lived in Spain for two months, before she returned to her Member State of origin, regularly spending time with her husband on holiday in Spain until 2010. In July 2010, Mr O., who held a residence document valid in Spain until September 2014 as a family member of a Union citizen, settled in the Netherlands. His application for a residence permit was rejected.

16 Mr B., a Moroccan national, had lived for several years in the Netherlands with his Dutch partner, before being declared undesirable in October 2005. He then moved to Belgium, where his partner joined him every weekend. In April 2007, having been declined residence in Belgium, he returned to Morocco, where he married his partner. In June 2009, his declaration of undesirability having been lifted by the Minister voor Immigratie, Intregratie en Asiel (Minister for Immigration, Integration and Asylum), he moved to the Netherlands, but his application for a residence permit was rejected in October 2009.

17 C-370/90, EU:C:1992:296.

18 C-291/05, EU:C:2007:771.

19 Paragraphs 37 to 43 of the judgment in *O. and B.*

20 Paragraph 40 of the judgment in *O. and B.*

21 Paragraph 41 of the judgment in *O. and B.*

22 See judgments of 11 December 2007, *Eind* (C-291/05, EU:C:2007:771, paragraph 31), and of 5 May 2011, *McCarthy* (C-434/09, EU:C:2011:277, paragraphs 29 and 34).

23 Paragraph 42 of the judgment in *O. and B.*, italics added.

24 See point 45 of this Opinion.

25 C-370/90, EU:C:1992:296.

26 C-291/05, EU:C:2007:771.

27 Judgment of 7 July 1992, *Singh* (C-370/90, EU:C:1992:296, paragraphs 19 and 21).

28 See judgment of 11 December 2007, *Eind* (C-291/05, EU:C:2007:771, paragraphs 35 and 36).

29 Paragraph 46 of the judgment in *O. and B.*

30 I do not share the view put forward by the UK Government at the hearing to the effect that it is not the object of Directive 2004/38 to ensure that those beneficiaries are integrated.

31 See, in this regard, the Court's reasoning in the judgment in *O. and B.* (paragraphs 53 to 56) regarding the residence permit granted on the basis of Article 7 of the directive.