ECLI:EU:C:2017:862

JUDGMENT OF THE COURT (Grand Chamber)

14 November 2017 (*)

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

In Case C-165/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom), made by decision of 8 March 2016, received at the Court on 21 March 2016, in the proceedings

Toufik Lounes

v

Secretary of State for the Home Department

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano (Rapporteur), Vice-President, R. Silva de Lapuerta, M. Ilešič, J.L. da Cruz Vilaça, J. Malenovský, E. Levits, C.G. Fernlund and C. Vajda, Presidents of Chambers, J.-C. Bonichot, A. Arabadjiev, S. Rodin, F. Biltgen, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: Y. Bot,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 15 May 2017,

after considering the observations submitted on behalf of:

– Mr Lounes, by P. Saini, Barrister, and by R. Matharu, Solicitor,

– the United Kingdom Government, by M. Holt, C. Crane and C. Brodie, acting as Agents, and by D. Blundell, Barrister,

– the Spanish Government, by V. Ester Casas, acting as Agent,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by E. Montaguti and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 May 2017,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, OJ 2005 L 30, p. 27, and OJ 2005 L 197, p. 34).

2 This request has been made in proceedings between Mr Toufik Lounes and the Secretary of State for the Home Department (United Kingdom) concerning the refusal to issue Mr Lounes with a residence card.

Legal context

European Union law

3 Recitals 5 and 18 of Directive 2004/38 state:

‘(5) The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality. ...

...

(18) In order to be a genuine vehicle for integration into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once obtained, should not be subject to any conditions.’

4 Article 1 of Directive 2004/38 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;

...’

5 Under Article 2 of the directive:

‘For the purposes 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.’

6 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.’

7 Article 6 of that directive, which is entitled ‘Right of residence for up to three months’, provides:

‘1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.’

8 Under the title ‘Right of residence for more than three months’, Article 7(1) and (2) of the directive provides:

‘1. 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:

(a) are workers or self-employed persons in the host Member State; or

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

(c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and

– have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that 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; or

...

2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).'

9 Chapter IV of Directive 2004/38, entitled 'Right of Permanent Residence', contains Article 16, which is worded as follows:

'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.

...

4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.'

United Kingdom law

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

11 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'.

12 Following two successive amendments to those regulations by (i) the Immigration (European Economic Area) (Amendment) Regulations 2012 (2012/1547) ('the EEA Regulations 2012/1547') and (ii) the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (2012/2560) ('the EEA Regulations 2012/2560'), Regulation 2 of the EEA Regulations 2006 provides:

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

13 Regulations 6, 7, 14 and 15 of the EEA Regulations 2006 transpose into United Kingdom law Articles 2, 7 and 16 of Directive 2004/38.

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

14 In September 1996, Ms Ormazabal, a Spanish national, moved to the United Kingdom to study. She has resided there since then and has been employed full-time since September 2004.

15 On 12 August 2009, she became a naturalised British citizen and was issued with a British passport, while also retaining her Spanish nationality.

16 In 2013 she began a relationship with Mr Lounes, an Algerian national, who had entered the United Kingdom on a six-month visitor visa on 20 January 2010 and overstayed illegally. Ms Ormazabal and Mr Lounes married in a religious ceremony on 1 January 2014, and then in a civil ceremony in London (United Kingdom) on 16 May 2014. Since then they have resided in the United Kingdom.

17 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.

18 On 14 May 2014, he was served with a 'notice to a person liable to removal', together with notice of a decision to remove him from the United Kingdom, on the ground that he had overstayed in that State in breach of immigration controls.

19 By letter of 22 May 2014, the Secretary of State for the Home Department informed Mr Lounes of her decision to refuse his application for a residence card and of the reasons for that refusal. The letter stated, in essence, that, following the amendment of Regulation 2 of the EEA Regulations 2006 by EEA Regulations 2012/1547 and 2012/2560, Ms Ormazabal was no longer regarded as an 'EEA national' for the purposes of the former regulations because she had become a British citizen 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 those regulations.

20 The order for reference indicates that, prior to that amendment, British citizens who, like Ms Ormazabal, were also nationals of another EEA Member State were — unlike British citizens without such dual nationality — regarded as EEA nationals for the purposes of Regulation 2 of the EEA Regulations 2006 and could therefore rely on the rights conferred by those regulations. However, since that amendment, such citizens have no longer been regarded as such and can therefore no longer benefit from those rights, with the consequence that their family members who are third-country nationals can likewise no longer rely on a right of residence in the United Kingdom in that capacity.

21 Mr Lounes brought a claim before the referring court against the decision of 22 May 2014 mentioned in paragraph 19 of this judgment.

22 That court has expressed doubts as to the compatibility of that decision and of Regulation 2 of the EEA Regulations 2006, as amended by the EEA Regulations 2012/1547 and 2012/2560, with Article 21 TFEU and Directive 2004/38.

23 The referring court states in this regard that, according to the explanatory note relating to the EEA Regulations 2012/1547 and also to the explanatory memoranda to those regulations and to the EEA Regulations 2012/2560, the amendment of Regulation 2 reflected the judgment of 5 May 2011, *McCarthy* (C-434/09, EU:C:2011:277), in which the Court of Justice ruled that Directive 2004/38 was not applicable to a Union citizen who has never exercised his right of free movement,

has always resided in a Member State of which he is a national and is, in addition, a national of another Member State.

24 In the present case, however, it is undisputed that, before acquiring British citizenship, Ms Ormazabal had exercised her freedom of movement and had acquired a right of residence in the United Kingdom as a Spanish national under Directive 2004/38.

25 Against that background, the referring court in essence questions whether, as the Secretary of State for the Home Department maintains, Ms Ormazabal ceased to be covered by Directive 2004/38 in the United Kingdom from the date of her naturalisation in that Member State or whether, as Mr Lounes asserts, even though Ms Ormazabal has acquired British citizenship, she must still be considered a 'beneficiary' of Directive 2004/38 within the meaning of Article 3(1) thereof and can still rely in the United Kingdom upon the rights guaranteed by the directive, given that she continues to hold Spanish nationality. In the first case, Mr Lounes would not qualify for a derived right of residence in the United Kingdom as a family member of a Union citizen under Directive 2004/38, whereas, in the second case, he would be in a position to be granted such a right.

26 In that connection, the referring court is also uncertain whether the answer to that question would be different depending on whether (i) Ms Ormazabal had acquired a right of permanent residence in the United Kingdom under Article 16 of Directive 2004/38 before she acquired British citizenship or (ii) had, at that time, only a right of residence for more than three months under Article 7 of the directive. The referring court indicates that the type of right of residence enjoyed by Ms Ormazabal before her naturalisation is the subject of debate between the parties to the main proceedings and is a question that is still to be determined.

27 In those circumstances, the High Court of Justice of England and 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:

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

– resides in the United Kingdom in the exercise of her right under Article 7 or Article 16 of Directive [2004/38]; and

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

– 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 Directive [2004/38], within the meaning of Article 3(1), whilst she is residing in the United Kingdom, and holding both Spanish nationality and British citizenship?'

Consideration of the question referred

28 As a preliminary point, it should be noted that, in accordance with settled case-law of the Court, even though, formally, the referring court has limited its question to the interpretation of

Article 3(1) of Directive 2004/38, that does not prevent the Court from providing the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating on the case before it, whether or not that court has specifically referred to them in its question (see, by analogy, judgment of 5 May 2011, *McCarthy*, C-434/09, EU:C:2011:277, paragraph 24 and the case-law cited).

29 In the present case, the information given in the order for reference indicates that the referring court's uncertainties in the case before it concern not only Directive 2004/38 but also Article 21(1) TFEU.

30 By its question, the referring court must therefore be understood to be asking, in essence, whether Directive 2004/38 and Article 21(1) TFEU are to be interpreted as meaning that, in a situation in which a Union citizen (i) has exercised his right of free movement by moving to and residing in a Member State other than that of which he is a national, under Article 7(1) or Article 16(1) of that directive, (ii) has then acquired the nationality of that Member State, while also retaining his nationality of origin, and (iii) several years later, has married a third-country national with whom he continues to reside in that Member State, that third-country national has a right of residence in the Member State concerned, on the basis of either Directive 2004/38 or Article 21(1) TFEU.

Interpretation of Directive 2004/38

31 According to settled case-law of the Court, the purpose of Directive 2004/38 is to facilitate the exercise of the primary and individual right to move and reside freely within the territory of the Member States which is conferred directly on citizens of the Union by Article 21(1) TFEU. Recital 5 of the directive states that that right should, if it is to be exercised under objective conditions of dignity, be also granted to the family members of those citizens, irrespective of nationality (judgment of 18 December 2014, *McCarthyand Others*, C-202/13, EU:C:2014:2450, paragraphs 31 and 33 and the case-law cited).

32 Directive 2004/38 does not however confer any autonomous right on family members of a Union citizen who are third-country nationals. Thus, any rights that may be conferred on those nationals by the directive are derived from the rights which the Union citizen concerned enjoys as a result of having exercised his freedom of movement (see, to that effect, judgment of 18 December 2014, *McCarthyand Others*, C-202/13, EU:C:2014:2450, paragraph 34 and the case-law cited).

33 As the Court has held on several occasions, it follows from a literal, contextual and teleological interpretation of Directive 2004/38 that the directive governs only the conditions determining whether a Union citizen can enter and reside in Member States other than that of which he is a national and does not confer a derived right of residence on third-country nationals who are family members of a Union citizen in the Member State of which that citizen is a national (see, to that effect, judgments of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraph 37, and of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraph 53).

34 First, it is clear from the wording of Article 3(1) of Directive 2004/38 that Union citizens who move to or reside in a 'Member State other than that of which they are a national', and their family members as defined in Article 2(2) who accompany or join them, fall within the scope of the directive and are beneficiaries of the rights conferred by it (judgment of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraph 38).

35 Secondly, other provisions of Directive 2004/38, in particular Article 6, Article 7(1) and (2) and Article 16(1) and (2), refer to the right of residence of a Union citizen and to the derived right of residence conferred on the family members of that citizen either in ‘another Member State’ or in ‘the host Member State’ (judgment of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraph 40 and the case-law cited).

36 Thirdly, although, as has been stated in paragraph 31 of this judgment, Directive 2004/38 aims to facilitate and strengthen the exercise of the right of Union citizens to move and reside freely within the territory of the Member States, the fact remains that the subject matter of the directive concerns, as is apparent from Article 1(a), the conditions governing the exercise of that right (judgments of 5 May 2011, *McCarthy*, C-434/09, EU:C:2011:277, paragraph 33, and of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraph 41).

37 The Court has accordingly held that, since, under a principle of international law, a Member State cannot refuse its own nationals the right to enter its territory and remain there and since those nationals thus enjoy an unconditional right of residence there, Directive 2004/38 is not intended to govern the residence of a Union citizen in the Member State of which he is a national. Consequently, in view of the case-law referred to in paragraph 32 of this judgment, nor is the directive intended to confer, in the territory of that Member State, a derived right of residence on family members of that citizen who are third-country nationals (see, to that effect, judgments of 5 May 2011, *McCarthy*, C-434/09, EU:C:2011:277, paragraphs 29, 34 and 42, and of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraphs 42 and 43).

38 In the present case, it is common ground that Ms Ormazabal, who is a Spanish national, exercised her freedom of movement by moving to and residing in a Member State other than that of which she was a national when she left Spain for the United Kingdom in 1996. It is also common ground that she had the status of a ‘beneficiary’ of Directive 2004/38 within the meaning of Article 3(1) thereof and that she was resident in the United Kingdom under Article 7(1) or — as the United Kingdom Government appears to accept — Article 16(1) of the directive, at least until she acquired British citizenship by naturalisation.

39 However, as the Advocate General has noted in points 48 and 63 of his Opinion, Ms Ormazabal’s acquisition of British citizenship gave rise to a change in the legal rules applicable to her, under both national law and the directive.

40 Since then, Ms Ormazabal has in fact been living in one of the Member States of which she is a national and consequently enjoys an unconditional right of residence there in accordance with the principle of international law mentioned in paragraph 37 of this judgment.

41 It follows that, since she acquired British citizenship, first, Ms Ormazabal has ceased to fall within the definition, recalled in paragraph 34 of this judgment, of a ‘beneficiary’ within the meaning of Article 3(1) of Directive 2004/38. Secondly, in view of the reasoning set out in paragraphs 36 and 37 of this judgment, the directive no longer governs her residence in the United Kingdom, as that residence is inherently unconditional.

42 That being so, it must be held that Directive 2004/38 has not applied to Ms Ormazabal’s situation since she was naturalised as a British citizen.

43 That conclusion is not called in question by the fact that Ms Ormazabal has exercised her freedom of movement by going to the United Kingdom and residing there or by the fact that she has continued to hold Spanish nationality in addition to British citizenship. Despite that combination of

circumstances, the fact remains that, since she acquired British citizenship, Ms Ormazabal has not been residing in a 'Member State other than that of which [she is] a national', as referred to in Article 3(1) of Directive 2004/38, and therefore no longer falls within the definition of a 'beneficiary' of that directive within the meaning of that provision.

44 In the light of the case-law referred to in paragraphs 32 and 37 of this judgment, her spouse, Mr Lounes, who is a third-country national, likewise does not fall within that definition and thus cannot benefit from a derived right of residence in the United Kingdom on the basis of Directive 2004/38.

Interpretation of Article 21(1) TFEU

45 As Directive 2004/38 does not confer a derived right of residence on third-country nationals in a situation such as that of Mr Lounes, it is necessary to determine whether such a right of residence may arise under the provisions of the FEU Treaty concerning Union citizenship, in particular Article 21(1) TFEU, which confers on every citizen of the Union the right to move and reside freely within the territory of the Member States, subject to, inter alia, the limitations and conditions laid down in the Treaties.

46 It should be recalled that the Court has already acknowledged, in certain cases, that third-country nationals, family members of a Union citizen, who were not eligible, on the basis of Directive 2004/38, for a derived right of residence in the Member State of which that citizen is a national could, however, be accorded such a right on the basis of Article 21(1) TFEU (see, to that effect, judgments of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraphs 44 to 50, and of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraph 54).

47 However, like Directive 2004/38, Article 21(1) TFEU does not confer any autonomous right of residence on a third-country national; rather it confers only a right derived from the rights enjoyed by the Union citizen concerned (judgments of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraphs 66 and 67, and of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraph 36).

48 Thus, a derived right of residence of a third-country national who is a family member of a Union citizen exists, in principle, only when it is necessary in order to ensure that the Union citizen can exercise his freedom of movement effectively. The purpose and justification of a derived right of residence are therefore based on the fact that a refusal to allow such a right would be such as to interfere, in particular, with that freedom and with the exercise and the effectiveness of the rights which Article 21(1) TFEU affords the Union citizen concerned (see, to that effect, judgments of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraph 68; of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraph 45; and of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraphs 36 and 73).

49 In the circumstances of the present case, it must be noted that, contrary to what the United Kingdom Government in essence maintains, the situation of a national of one Member State, such as Ms Ormazabal, who has exercised her freedom of movement by going to and residing legally in another Member State, cannot be treated in the same way as a purely domestic situation merely because the person concerned has, while resident in the host Member State, acquired the nationality of that State in addition to her nationality of origin.

50 The Court has already held that there is a link with EU law with regard to nationals of one Member State who are lawfully resident in the territory of another Member State of which they are

also nationals (see, to that effect, judgment of 8 June 2017, *Freitag*, C-541/15, EU:C:2017:432, paragraph 34).

51 Accordingly, Ms Ormazabal, who is a national of two Member States and has, in her capacity as a Union citizen, exercised her freedom to move and reside in a Member State other than 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, also against one of those two Member States.

52 The rights which nationals of Member States enjoy under that provision include the right to lead a normal family life, together with their family members, in the host Member State (see, by analogy, judgment of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449, paragraph 62).

53 A national of one Member State who has moved to and resides in another Member State cannot be denied that right merely because he subsequently acquires the nationality of the second Member State in addition to his nationality of origin, otherwise the effectiveness of Article 21(1) TFEU would be undermined.

54 In the first place, denying him that right would amount to treating him in the same way as a citizen of the host Member State who has never left that State, disregarding the fact that the national concerned has exercised his freedom of movement by settling in the host Member State and that he has retained his nationality of origin.

55 A Member State cannot restrict the effects that follow from holding the nationality of another Member State, in particular the rights which are attendant thereon under EU law and which are triggered by a citizen exercising his freedom of movement.

56 In the second place, the rights conferred on a Union citizen by Article 21(1) TFEU, including the derived rights enjoyed by his family members, are intended, amongst other things, to promote the gradual integration of the Union citizen concerned in the society of the host Member State.

57 Union citizens, such as Ms Ormazabal, who, after moving, in the exercise of their freedom of movement, to the host Member State and residing there for a number of years pursuant to and in accordance with Article 7(1) or Article 16(1) of Directive 2004/38, acquire the nationality of that Member State, intend to become permanently integrated in that State.

58 As is stated, in essence, by the Advocate General in point 86 of his Opinion, it would be contrary to the underlying logic of gradual integration that informs Article 21(1) TFEU to hold that such citizens, who have acquired rights under that provision as a result of having exercised their freedom of movement, must forego those rights — in particular the right to family life in the host Member State — because they have sought, by becoming naturalised in that Member State, to become more deeply integrated in the society of that State.

59 It would also follow that Union citizens who have exercised their freedom of movement and acquired the nationality of the host Member State in addition to their nationality of origin would, so far as their family life is concerned, be treated less favourably than Union citizens who have also exercised that freedom but who hold only their nationality of origin. The rights conferred on Union citizens in the host Member State, particularly the right to a family life with a third-country national, would thus be reduced in line with their increasing degree of integration in the society of that Member State and according to the number of nationalities that they hold.

60 It follows from the foregoing that, if the rights conferred on Union citizens by Article 21(1) TFEU are to be effective, citizens in a situation such as Ms Ormazabal's must be able to continue to enjoy, in the host Member State, the rights arising under that provision, after they have acquired the nationality of that Member State in addition to their nationality of origin and, in particular, must be able to build a family life with their third-country-national spouse, by means of the grant of a derived right of residence to that spouse.

61 The conditions for granting that derived right of residence must not be stricter than those provided for by Directive 2004/38 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 settling in a Member State other than that of which he is a national. Even though Directive 2004/38 does not cover a situation such as that mentioned in the preceding paragraph of this judgment, it must be applied, by analogy, to that situation (see, by analogy, judgments of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraphs 50 and 61, and of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraphs 54 and 55).

62 In view of all the foregoing, the answer to the question is that Directive 2004/38 must be interpreted as meaning that, in a situation in which a Union citizen (i) has exercised his freedom of movement by moving to and residing in a Member State other than that of which he is a national, under Article 7(1) or Article 16(1) of that directive, (ii) has then acquired the nationality of that Member State, while also retaining his nationality of origin, and (iii) several years later, has married a third-country national with whom he continues to reside in that Member State, that third-country national does not have a derived right of residence in the Member State in question on the basis of Directive 2004/38. The third-country national is however eligible for a derived right of residence under Article 21(1) TFEU, on conditions which must not be stricter than those provided for by Directive 2004/38 for the grant of such a right to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by settling in a Member State other than the Member State of which he is a national.

Costs

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

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

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that, in a situation in which a citizen of the European Union (i) has exercised his freedom of movement by moving to and residing in a Member State other than that of which he is a national, under Article 7(1) or Article 16(1) of that directive, (ii) has then acquired the nationality of that Member State, while also retaining his nationality of origin, and (iii) several years later, has married a third-country national with whom he continues to reside in that Member State, that third-country national does not have a derived right of residence in the Member State in question on the basis of Directive 2004/38.

The third-country national is however eligible for a derived right of residence under Article 21(1) TFEU, on conditions which must not be stricter than those provided for by Directive 2004/38 for the grant of such a right to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by settling in a Member State other than the Member State of which he is a national.

Lenaerts	Tizzano	Silva de Lapuerta
Ilešič	Da Cruz Vilaça	Malenovský
Levits	Fernlund	Vajda
Bonichot	Arabadjiev	Rodin
Biltgen	Jürimäe	Lycourgos

Delivered in open court in Luxembourg on 14 November 2017.

A. Calot Escobar	K. Lenaerts
Registrar	President

* Language of the case: English.