



## Reports of Cases

### JUDGMENT OF THE COURT (Fourth Chamber)

13 June 2013\*

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Scope *ratione personae* — Grant of family benefits to a third-country national with a right of residence in a Member State — Regulation (EC) No 859/2003 — Directive 2004/38/EC — Regulation (EEC) No 1612/68 — Length-of-residence requirement)

In Case C-45/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the *cour du travail de Bruxelles* (Belgium), made by decision of 19 January 2012, received at the Court on 30 January 2012, in the proceedings

**Office national d'allocations familiales pour travailleurs salariés (ONAFS)**

v

**Radia Hadj Ahmed,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, U. Löhmus, M. Safjan and A. Prechal (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 28 February 2013,

after considering the observations submitted on behalf of:

- Ms Hadj Ahmed, by I. de Viron and M. Hernandez Dispaux, *avocates*,
- the Belgian Government, by C. Pochet and T. Materne, acting as Agents, and J. Vanden Eynde, *avocat*,
- the Czech Government, by M. Smolek, acting as Agent,
- the European Commission, by M. Van Hoof and V. Kreuschitz, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

\* Language of the case: French.

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006 (OJ 2006 L 392, p. 1) ('Regulation No 1408/71'), Articles 13(2) and 14 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), read in conjunction with Article 18 TFEU, and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between the Office national d'allocations familiales pour travailleurs salariés (National Family Allowances Office for Employed Persons: 'ONAF') and Ms Hadj Ahmed concerning the grant of guaranteed family benefits.

### **Legal context**

#### *European Union law*

- 3 Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968(II), p. 475), repealed by Directive 2004/38, stated:

'1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

(a) his spouse and their descendants who are under the age of 21 years or are dependants;

...'

- 4 Article 12 of Regulation No 1612/68, repealed by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1), the wording of which was reproduced in Article 10 of the latter regulation, provided, in its first paragraph:

'The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.'

- 5 Article 1 of Regulation No 1408/71, headed 'Definitions', provides:

'For the purposes of applying this Regulation:

...

- (f) (i) *member of the family* means any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided ...; where, however, the said legislation regard[s] as a member of the family or a member of the household only a person living under the same roof as the employed or self-employed person or student, this condition shall be considered satisfied if the person in question is mainly dependent on that person. ...

...'

- 6 Article 2(1) of Regulation No 1408/71, that article being headed 'Persons covered', provides:

'This Regulation shall apply to employed ... persons ..., as well as to the members of their families ...'.

- 7 Article 1 of Council Regulation (EC) No 859/2003 of 14 May 2003, extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ 2003 L 124, p. 1), provides:

'... the provisions of Regulation (EEC) No 1408/71 ... shall apply to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, as well as to members of their families and to their survivors, provided they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.'

- 8 Article 13(2) of Directive 2004/38, that article being headed 'Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership', provides that, under certain conditions, divorce, annulment of marriage or termination of a registered partnership are not to entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State.

- 9 Article 14(2) of that directive, that article being headed 'Retention of the right of residence', provides:

'Union citizens and their family members shall have the right of residence provided for in [Article] 13 as long as they meet the conditions set out therein.'

#### *Belgian law*

- 10 Article 1 of the Law of 20 July 1971 introducing guaranteed family benefits (*Moniteur belge* of 7 August 1971, p. 9302, 'the Law introducing guaranteed family benefits'), in the version applicable to the main proceedings, provided:

'... family benefits shall be granted, under the conditions laid down by, or by virtue of, the present Law, for a child who is exclusively or principally dependent upon a natural person who resides in Belgium.

...

A natural person, as referred to in the first paragraph, must have actually resided uninterruptedly in Belgium for at least the five years preceding lodgement of the application for guaranteed family benefits.

The following persons are exempted from that requirement:

1. any person covered by [Regulation No 1408/71];

2. a stateless person;
3. a refugee within the meaning of the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and the expulsion of foreign nationals [(*Moniteur belge* of 31 December 1980, p. 14584, ‘the Law of 15 December 1980’)];
4. a person not the subject of point 1 who is a national of a State which has ratified the European Social Charter or the revised European Social Charter.

If a natural person who is the subject of paragraph 1 is a foreign national, he must be allowed or authorised to reside in Belgium and to establish himself there, in accordance with the [Law of 15 December 1980] ...’.

- 11 During the period relevant to the dispute in the main proceedings, the Law of 30 December 2009 laying down various provisions (*Moniteur belge* of 31 December 2009, p. 82925) extended the waiver of the five-year residence requirement by adding to Article 1(7) of the Law introducing guaranteed family benefits a point 5, which is worded as follows:

‘a person who applies for guaranteed family benefits for a child who is:

- (a) a national of a State where [Regulation No 1408/71] is applicable or, otherwise, a national of a State which has ratified the European Social Charter or the [revised] European Social Charter;
- (b) either a stateless person or a refugee within the meaning of the Law of 15 December 1980 ...’.

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

- 12 Ms Hadj Ahmed, an Algerian national, has been named in the Belgian population register since 18 January 2006 and has, since that date, held a permit authorising her to reside on Belgian territory. She obtained that residence permit because she joined her partner of French nationality in Belgium. She and that partner are the parents of a child born on 18 December 2003, who is also of French nationality. In 2006, after she obtained her residence permit, Ms Hadj Ahmed, the defendant in the main proceedings, brought to Belgium her daughter born on 28 January 1993 and of Algerian nationality.
- 13 When she was living with her partner, Ms Hadj Ahmed, who never had the status of a Belgian worker, was entitled to family allowances at the ordinary rate for her two children on the basis of periods of work completed in Belgium by her partner.
- 14 Ms Hadj Ahmed and her partner separated in June 2007. Since 15 May 2007 Ms Hadj Ahmed, who is not dependent on her former partner, has been reliant on social assistance.
- 15 As from 1 October 2007, Ms Hadj Ahmed no longer received family allowances for her daughter, although she continued to receive allowances for her other child. An application for guaranteed family benefits in respect of her daughter as from that date was submitted to ONAFTS. On 7 April 2008 ONAFTS rejected the application on the ground that Ms Hadj Ahmed did not meet the five-year residence requirement pursuant to Article 1 of the Law introducing guaranteed family benefits.
- 16 By an application of 3 July 2008, Ms Hadj Ahmed brought an action before the tribunal du travail de Bruxelles (Labour Court, Brussels) (Belgium) against that decision of ONAFTS, claiming that she was entitled to rely on the provisions of Regulation No 1408/71. At the same time, upon invitation from ONAFTS, she submitted to the relevant authorities an application seeking a derogation from the requirement relating to the length of residence in Belgium. As a result of that procedure, Ms Hadj

Ahmed received guaranteed family benefits in respect of her daughter after four years of residence, that is, from 18 January 2010. Consequently, the period for which those benefits are claimed for the purposes of the dispute in the main proceedings is from 1 October 2007 to 18 January 2010.

- 17 By judgment of 23 August 2010, the tribunal du travail de Bruxelles upheld the action brought by Ms Hadj Ahmed. Referring to the judgment in Case C-456/02 *Trojani* [2004] ECR I-7573, that court held that, since Ms Hadj Ahmed was authorised to establish herself in Belgium as a member of the family of a Union citizen, she had the same status as a Union citizen and was entitled to be treated in the same way as nationals of that Member State.
- 18 ONAFTS brought an appeal against that decision before the referring court. According to ONAFTS, it cannot be held that the defendant in the main proceedings comes within the scope of Regulation No 1408/71. ONAFTS expresses doubts as to whether it can be inferred from Directive 2004/38 that a person who is not a Union citizen is to be treated as a Union citizen when he or she joins a person who has that status. It also claims that the judgment in *Trojani* covers a situation involving a Union citizen and a social security benefit, in other words circumstances that differ from those of the defendant in the main proceedings.
- 19 The referring court considers that Ms Hadj Ahmed has an interest in relying on the application of Regulation No 1408/71 in order to secure a waiver of the five-year residence requirement imposed by the Law introducing guaranteed family benefits.
- 20 In those circumstances, the tribunal du travail de Bruxelles decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
  - ‘(1) In circumstances where a third-country national (in this case, of Algerian nationality) obtained, less than five years earlier, a permit to reside in a Member State (in this case, Belgium), in order to join, not in the context of a marriage or registered partnership, a citizen of another Member State (in this case, a person of French nationality), by whom she has a child (of French nationality), is that national one of the persons covered *ratione personae* by Regulation No 1408/71 as a family member of a worker who is a national of a Member State, for purposes of the grant, as beneficiary, of guaranteed family benefits for another child who is a third-country national (in this case, of Algerian nationality) even though her cohabitation with the father of the child of French nationality has in the meantime come to an end?
  - (2) If the first question is answered in the negative, in the circumstances described in the first question, and by reason of the presence in her household of the child of French nationality, is that third-country national, or her child who is a third-country national, covered *ratione personae* by Regulation No 1408/71 as a family member of a worker who is a national of a Member State, for the grant of guaranteed family benefits for the child of Algerian nationality?
  - (3) If the foregoing questions are answered in the negative, in the circumstances described in the first question, does that third-country national enjoy, under [Articles 13(2) and 14] of Directive 2004/38 ..., read in conjunction with Article 12 EC (now Article 18 ... TFEU), a right to the same legal treatment as nationals for so long as that right of residence has not been withdrawn, with the result that the Belgian State is precluded from imposing on her a length-of-residence requirement for the grant of guaranteed family benefits when that requirement is not imposed on nationals who are beneficiaries?
  - (4) If the foregoing questions are answered in the negative, in the circumstances described in the first question, does that third-country national, as the mother of a Union citizen, benefit under Articles 20 and 21 of the [Charter] from the principle of equal treatment, with the result that the Belgian State is precluded from imposing on her a length-of-residence requirement for the grant



of guaranteed family benefits for another of her children, who is a third-country national, when that length-of-residence requirement is not imposed in respect of a child [who has the nationality of a Member State]?’

## Consideration of the questions referred

### *The first and second questions*

- 21 By its first two questions, which it is appropriate to consider together, the national court asks, in essence, whether Regulation No 1408/71 must be interpreted as meaning that a third-country national (‘the mother’) or her daughter, who is also a third-country national (‘the daughter’), come within its scope where their situation is the following:
- the mother obtained, less than five years earlier, a permit to reside in a Member State in order to join, not in the context of a marriage or registered partnership, a national of another Member State (‘the national of another Member State’), by whom she has a child who has the nationality of the latter Member State (‘the child of both parents’);
  - only the national of another Member State has the status of worker;
  - in the meantime the cohabitation of the mother and the national of another Member State has come to an end, and
  - the daughter and the child of both parents are members of their mother’s household.
- 22 In that regard, it must be borne in mind that the concept ‘member of the family’ of a worker, for the purposes of Regulation No 1408/71, is defined in Article 1(f)(i) of that regulation as ‘any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided ...; where, however, the said legislation regard[s] as a member of the family or a member of the household only a person living under the same roof as the employed or self-employed person ..., this condition shall be considered satisfied if the person in question is mainly dependent on that person’.
- 23 Thus, first of all, that provision makes express reference to national legislation, defining a ‘member of the family’ as ‘any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided’ (Case C-363/08 *Slanina* [2009] ECR I-11111, paragraph 25).
- 24 Secondly, Article 1(f)(i) of Regulation No 1408/71 introduces the proviso ‘where, however, the said [national] legislation regard[s] as a member of the family or a member of the household only a person living under the same roof as the employed or self-employed person, this condition shall be considered satisfied if the person in question is mainly dependent on that person’ (*Slanina*, paragraph 26).
- 25 The condition laid down in Article 1(f)(i) of Regulation No 1408/71 is therefore met, as the Czech Government and the European Commission rightly point out, if, in the circumstances of the main proceedings, the mother and daughter can be regarded for the purposes of national law as ‘members of the family’ of the national of another Member State and, where that is not the case, if they can be regarded as being ‘mainly dependent’ on him (see, to that effect, *Slanina*, paragraph 27).
- 26 Even though the documents before the Court contain indications that this condition has not been satisfied in the main proceedings, it is for the national court to determine this.

- 27 On the other hand, as the Belgian Government rightly points out, it follows from Article 1(f)(i) of Regulation No 1408/71, as interpreted in paragraph 25 above, that the mere fact that the child of both parents is a member of the mother's household is not, in itself, relevant for the purposes of classifying the mother or the daughter as a 'member of the family', within the meaning of that provision, of the national of another Member State.
- 28 As regards whether Regulation No 859/2003, which the national court also refers to, might be applicable, it should be pointed out that Article 1 of that regulation extends the scope *ratione personae* of Regulation No 1408/71 to third-country nationals provided they do not already come within the scope *ratione personae* of the latter regulation solely on the basis of their nationality.
- 29 Whether or not Regulation No 1408/71 is applicable to the mother or the daughter depends, not on their nationality, but on the fact that they might be considered to be members of the family, within the meaning of Article 1(f)(i) of that regulation, of the national of another Member State.
- 30 Moreover, under Article 1 of Regulation No 859/2003, a third-country national must fulfil two conditions in order for the provisions of Regulation No 1408/71 to be applicable to that person and also to the members of his family. Thus, the third-country national must, first, be legally resident in a Member State and, secondly, not be in a situation which is confined in all respects within a single Member State. This concerns inter alia the situation of a third-country national who has links only with a third country and a single Member State (see, to that effect, Case C-247/09 *Xhymshiti* [2010] ECR I-11845, paragraph 28).
- 31 As concerns the first of those conditions, it must be noted that, having regard to the information contained in the order for reference, both the mother and the daughter, at the material time for the purposes of the main proceedings, were legally resident in Belgium.
- 32 As concerns the second condition, the situation of the mother and that of the daughter, as is clear from the documents before the Court, is such that they have links only with one third country and a single Member State, namely the People's Democratic Republic of Algeria and the Kingdom of Belgium respectively.
- 33 In those circumstances, it cannot be held that Regulation No 859/2003 extends the scope of Regulation No 1408/71 to persons such as the mother and the daughter.
- 34 Consequently, the answer to the first and second questions is that Regulation No 1408/71 must be interpreted as meaning that the mother and the daughter, while their situation is as described in paragraph 21 above, do not come within the scope *ratione personae* of that regulation, unless they can be regarded, within the meaning of the national legislation and for its application, as 'members of the family' of the national of another Member State or, where that is not the case, unless they can be regarded as being 'mainly dependent' on him.

### *The third question*

- 35 By its third question the national court asks, in essence, whether Articles 13(2) and 14 of Directive 2004/38, read in conjunction with Article 18 TFEU, must be interpreted as precluding the legislation of a Member State by which the latter imposes on the mother, while her situation is as described in paragraph 21 above, a length-of-residence requirement of five years for the grant of guaranteed family benefits when that requirement is not imposed on its own nationals.

- 36 In that regard, as the Belgian and Czech Governments and the Commission rightly point out, it follows from the express wording of Article 13(2) of Directive 2004/38 that the right of residence of a Union citizen's family members who are not nationals of a Member State is retained, by virtue of that provision and under certain conditions, only in the event of divorce, annulment of marriage or termination of a registered partnership.
- 37 As is confirmed by the actual wording of the first question, the circumstances of the main proceedings do not reveal the existence of a marriage or a registered partnership between the mother and the national of another Member State. In those circumstances, the mother cannot rely on a right of residence under Article 13(2) of Directive 2004/38, or under Article 14 of that directive, which, in Article 14(2), merely refers to the need for the persons concerned to satisfy the conditions set out, inter alia, in Article 13 of that directive in order to be able to retain a right of residence.
- 38 Taking into consideration Article 18 TFEU, which the national court refers to in the third question, cannot affect that conclusion.
- 39 The fact that an individual such as the defendant in the main proceedings held, at the material time for the purposes of the main proceedings, a permit authorising her to reside in Belgium does not mean that she is entitled to take advantage of the principle of non-discrimination on grounds of nationality under Article 18 TFEU.
- 40 It is admittedly true that, in paragraph 46 of its judgment in *Trojani*, the Court held in essence that, provided that a Union citizen is in possession of a permit for residence in a Member State, he may rely on Article 18 TFEU in order to be granted a social security benefit under the same conditions as nationals of that Member State.
- 41 However, that interpretation of Article 18 TFEU, the background to which concerns Union citizenship (see, to that effect, Case C-209/03 *Bidar* [2005] ECR I-2119, paragraphs 37 and 39), cannot be applied as it stands to a situation where a third-country national is in possession of a permit for residence in a Member State.
- 42 That said, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. Consequently, even if, formally, the referring court has limited its third question to the interpretation of Directive 2004/38, that does not prevent the Court from providing the referring court with all the elements of interpretation of European Union law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is, in this regard, for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the points of European Union law which require interpretation in view of the subject-matter of the dispute (see Case C-243/09 *Fuß* [2010] ECR I-9849, paragraphs 39 and 40 and case-law cited).
- 43 The Commission submits that, in order to prevent a length-of-residence requirement of five years for the grant of guaranteed family benefits being imposed on her, the mother could rely on the principle of non-discrimination on grounds of nationality, on the basis of a right of residence arising from Article 12 of Regulation No 1612/68.
- 44 In that regard, it must be observed that the aim of Regulation No 1612/68, namely freedom of movement for workers, requires, for such freedom to be guaranteed in compliance with the principles of liberty and dignity, the best possible conditions for the integration of the migrant worker's family in the society of the host Member State (see Case C-308/89 *di Leo* [1990] ECR I-4185, paragraph 13, and Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 50).



- 45 For such integration to come about, a child of a migrant worker must have the possibility of going to school and continuing his or her education in the host Member State, as is expressly provided in Article 12 of Regulation No 1612/68, in order to be able to complete that education successfully (Joined Cases 389/87 and 390/87 *Echternach and Moritz* [1989] ECR 723, paragraph 21, and *Baumbast and R*, paragraph 51).
- 46 According to case-law, that right of access to education implies that the child of a migrant worker or former migrant worker has an independent right of residence when that child wishes to continue his or her education in the host Member State, and that the parent who is the child's primary carer has a corresponding right of residence (see Case C-480/08 *Teixeira* [2010] ECR I-1107, paragraphs 36 and 53).
- 47 According to the Commission, both the daughter and the child of both parents, and, consequently, the mother for as long as she is the primary carer of the children, have such a right of residence on the basis of Article 12 of Regulation No 1612/68.
- 48 In circumstances such as those of the main proceedings, that interpretation cannot however be accepted as concerns the daughter.
- 49 First, it is common ground that the daughter is not the child of the national of another Member State. In relation to that person, she therefore does not have the status of a child of a national of a Member State who is or has been employed in the territory of another Member State, within the meaning of Article 12 of Regulation No 1612/68.
- 50 Secondly, it is admittedly true, as the Commission contends, that the right of 'his spouse and their descendants who are under the age of 21 years or are dependants' to install themselves with the migrant worker, pursuant to Article 10(1)(a) of Regulation No 1612/68, must be interpreted as meaning that the benefit of that right extends both to the descendants of that worker and to those of his spouse (*Baumbast and R*, paragraph 57).
- 51 However, suffice it to state that, in circumstances such as those of the main proceedings, the mother is not, and has never been, the spouse of the national of another Member State, and a mere cohabiting partner cannot be considered to be a 'spouse' for the purposes of Article 10(1)(a) of Regulation No 1612/68 (see, to that effect, Case 59/85 *Reed* [1986] ECR 1283, paragraph 16). Therefore, the daughter cannot be regarded as the child of the spouse of a migrant worker or former migrant worker.
- 52 On the other hand, as regards the child of both parents, it must be observed that, as is clear from the documents before the Court, this child is indeed the child of a national of a Member State who is or has been employed in the territory of another Member State, within the meaning of Article 12 of Regulation No 1612/68. However, so that the mother, as the parent who is that child's primary carer, may have a right of residence based on that provision, the child of both parents must have entered the educational system in the host Member State (see, to that effect, Joined Cases C-147/11 and C-148/11 *Czop and Punakova* [2012] ECR, paragraph 29).
- 53 As it is, the Court does not have sufficient information with regard to the circumstances of the child of both parents, and more particularly as regards that child's schooling, which, at this stage of the proceedings before the Court, means that any interpretation of the implications of the mother having a right of residence based on Article 12 of Regulation No 1612/68 for the dispute in the main proceedings would be hypothetical in nature.

54 In the light of the foregoing, the answer to the third question is that Articles 13(2) and 14 of Directive 2004/38, read in conjunction with Article 18 TFEU, must be interpreted as not precluding the legislation of a Member State by which the latter subjects the grant of guaranteed family benefits to the mother, while her situation is as described in paragraph 21 above, to a length-of-residence requirement of five years although its own nationals are not subject to that requirement.

#### *The fourth question*

55 Given the answer to the preceding questions, there is no need to answer the fourth question.

56 It must be recalled that the fundamental rights guaranteed in the legal order of the European Union, including the Charter, are applicable in all situations governed by European Union law, but not outside such situations (see, to that effect, Case C-617/10 *Åkerberg Fransson* [2013] ECR, paragraph 19 and case-law cited).

57 As is apparent from the answer to the preceding questions, the Court does not possess any information enabling it to conclude that a situation such as the one at issue in the main proceedings is actually governed by European Union law.

#### **Costs**

58 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 (Fourth Chamber) hereby rules:

1. **Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, must be interpreted as meaning that a third-country national or her daughter, who is also a third-country national, while their situation is the following:**

- **that third-country national obtained, less than five years earlier, a permit to reside in a Member State in order to join, not in the context of marriage or registered partnership, a national of another Member State, by whom she has a child who has the nationality of the latter Member State;**
- **only that national of another Member State has the status of worker;**
- **in the meantime the cohabitation of the third-country national and the national of another Member State has come to an end; and**
- **both children are members of their mother's household,**

**do not come within the scope *ratione personae* of that regulation, unless that third-country national or her daughter can be regarded, within the meaning of the national legislation and for its application, as ‘members of the family’ of the national of another Member State or, where that is not the case, unless they can be regarded as being ‘mainly dependent’ on him.**

2. **Articles 13(2) and 14 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, read in conjunction with Article 18 TFEU, must be interpreted as not precluding the legislation of a Member State by which the latter subjects the grant of guaranteed family benefits to a third-country national, while her situation is as described in point 1 of this operative part, to a length-of-residence requirement of five years although its own nationals are not subject to that requirement.**

[Signatures]