

Parties to the main proceedings

Applicant: Deniz Sahin

Defendant: Bundesminister für Inneres

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof (Austria) — Interpretation of Articles 18 EC and 39 EC, as well as Articles 3(1), 6(2), 7(1)(d) and (2), 9(1) and 10(1) 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) — Right of residence of a national of a non-member country who entered the territory of a Member State as an asylum seeker and subsequently married a national of another Member State

Operative part of the order

- Articles 3(1), 6(2) and 7(1)(d) and (2) 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 must be interpreted as applying also to family members who arrived in the host Member State independently of the Union citizen and acquired the status of family member or started to lead a family life with that Union citizen only after arriving in that State. In that regard, the fact that, at the time the family member acquires that status or starts to lead a family life, he resides temporarily in the host Member State pursuant to that State's asylum laws has no bearing.
- Articles 9(1) and 10 of Directive 2004/38 preclude a national provision under which family members of a Union citizen who are not nationals of a Member State and who, in accordance with Community law, and in particular Article 7(2) of the directive, have a right of residence, cannot be issued with a residence card of a family member of a Union citizen solely because they are entitled temporarily to reside in the host Member State under that State's asylum laws.

⁽¹⁾ OJ C 64, 8.3.2008.

Order of the Court of 13 November 2008 — Giuseppe Gargani v European Parliament

(Case C-25/08 P) ⁽¹⁾

(Appeal — Action brought by the Chairman of the Committee on Legal Affairs of the Parliament against the 'action' of the President of the Parliament which led to the submission of observations in the name of the Parliament in a matter which related to a reference for a preliminary ruling — Time-limit for initiating proceedings)

(2009/C 44/40)

Language of the case: German

Parties

Appellant: Giuseppe Gargani (represented by: W. Rothley, Rechtsanwalt)

Other party to the proceedings: European Parliament (represented by: J. Schoo and H. Krück, agents)

Re:

Appeal brought against the Order of the Court of First Instance (Third Chamber) of 21 November 2007, Gargani v Parliament (T-94/06), in which the Court of First Instance dismissed as manifestly inadmissible the action brought by the Chairman of the Committee on Legal Affairs of the European Parliament, seeking a declaration of unlawfulness in relation to the decision of the President of the European Parliament to submit written observations in the name of the Parliament, in accordance with the second paragraph of Article 23 of the Statute of the Court, in the context of a reference for a preliminary ruling, contrary to the advice of the Commission of Legal Affairs, and his refusal to submit the issue to plenary

Operative part of the order

- The appeal is dismissed.
- Mr Gargani is ordered to pay the costs.

⁽¹⁾ OJ C 79, 29.3.2008.