



Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 27 April 2017¹

Case C-184/16

Ovidiu-Mihaita Petrea

v

Ypourgou Esoterikon kai Dioikitikis Anasygrotisis

(Request for a preliminary ruling from the Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance of Thessaloniki, Greece))

(Reference for a preliminary ruling — Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Residence of a citizen of a Member State in the territory of another Member State despite an earlier removal decision — Lawfulness of a decision to withdraw a certificate of registration and of a second removal decision)

I. Introduction

1. Can a citizen of a Member State who enters the territory of another Member State, where he obtains a certificate of registration as a Union citizen notwithstanding the fact that he had been the subject of an exclusion order by that host Member State, be removed from the territory without his situation being reviewed in accordance with the provisions of Directive 2004/38/EC?²

2. By means of this reference for a preliminary ruling, the Court will be called upon to clarify the scope of the procedural safeguards and protective measures set out in Directive 2004/38 when a second decision is taken to remove a Union citizen even though he was already the subject of a final exclusion order.

II. Legal context

A. EU law

3. Articles 4, 5 and 6 to 13 of Directive 2004/38 lay down the conditions for the exercise of some of the rights stemming from citizenship of the Union, namely the rights of exit, entry and residence.

¹ Original language: French.

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), as amended by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 (OJ 2011 L 141, p. 1, and corrigendum OJ 2004 L 229, p. 35, 'Directive 2004/38').

4. Paragraph 1 of Article 8 of that directive, entitled ‘Administrative formalities for Union citizens’, provides:

‘Without prejudice to Article 5(5), for periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities.’

5. However, Articles 27, 28 and 30 to 32 of Directive 2004/38, appearing in Chapter VI entitled ‘Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health’, state:

‘Article 27

General principles

1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

...

Article 28

Protection against expulsion

1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

...

Article 30

Notification of decisions

1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.

...

Article 31

Procedural safeguards

1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.

...

3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.

4. Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.

Article 32

Duration of exclusion orders

1. Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.

The Member State concerned shall reach a decision on this application within six months of its submission.

2. The persons referred to in paragraph 1 shall have no right of entry to the territory of the Member State concerned while their application is being considered.'

B. Greek law

6. Presidential Decree 106/2007 on the freedom of movement and residence in Greece of Union citizens and their family members (FEK A' 135/2007) transposed Directive 2004/38 into Greek law. Article 8(1) of that decree provides:

'Union citizens who intend to reside in Greece for a period exceeding three months from their date of arrival are required, upon the expiry of that three-month period, to appear in person before the police authorities with competence in matters concerning foreign nationals in order to register. The authorities shall effect that registration and immediately issue a certificate of registration. ...'

7. Articles 22, 23 and 24 of Presidential Decree 106/2007 transpose, respectively, Articles 28, 33, 30 and 31 of Directive 2004/38, while Article 21(6) of that decree transposes Article 32(2) of the directive.

8. Law 3907/2011 (FEK A' 7/26.1.2011) transposes Directive 2008/115/EC,³ which applies exclusively to third country nationals staying illegally on the territory of a Member State. Nonetheless, Article 40(1) and (2) of that law provides:

'1. As regards the removal of persons who enjoy the right of freedom of movement in accordance with Article 2(5) of the Schengen Borders Code and the provisions of Presidential Decree 106/2007, the provisions of Chapter I of this law relating to bodies, procedures and procedural safeguards shall apply, provided that Articles 22 to 24 of Presidential Decree 106/2007 do not contain more favourable provisions.

2. Concerning the conditions and detailed rules for imposing a removal order on the persons referred to in paragraph 1, Articles 22 to 24 of Presidential Decree 106/2007 shall continue to apply.'

III. Facts in the main proceedings

9. In October 2011, Ovidiu-Mihaita Petrea, a Romanian national, was sentenced by a Greek court to eight months' imprisonment suspended for three years for the criminal offence he had committed, namely robbery in concert.

10. Subsequently, by decision of 30 October 2011 ('the 2011 decision'), Mr Petrea was ordered to return to his country of origin on grounds of public policy and public security. By that same decision, Mr Petrea was entered in the national register of undesirable aliens and in the Schengen Information System until 30 October 2018.

11. The Greek authorities informed Mr Petrea of his rights, available legal remedies and the possibility of requesting a translation of the main points of the 2011 decision.

12. Mr Petrea submitted a statement in which he waived all legal remedies and confirmed that he wished to return to his country of origin. He was removed on 5 November 2011.

13. On 1 September 2013, Mr Petrea returned to Greece where, on 25 September 2013, he submitted an application for a certificate of registration as a Union citizen. The Greek authorities granted the application and issued the certificate in question to Mr Petrea on the same day.

14. As the Greek Government conceded in the course of the proceedings before the Court, that certificate of registration was issued in error.

15. By administrative act of 14 October 2014 issued by the deputy head of the Tmima Allodapon Dytikis Thessalonikis (Department for Foreign Nationals in western Thessaloniki), the certificate at issue was withdrawn. By the same act, Mr Petrea was ordered to leave Greece. That decision was taken because he had been present in Greek territory whilst still on the national register of undesirable aliens pursuant to the 2011 decision.

16. The applicant brought an action challenging the administrative act of 2014, claiming that the 2011 decision ordering his exclusion had not been notified to him in a language he understood. Mr Petrea argued that, as he had not committed any criminal offences since his conviction in 2011, he no longer posed a danger to public policy and public security at that time.

³ Directive of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals (OJ 2008 L 348, p. 98).

17. The action brought by Mr Petrea was dismissed by decision of 10 November 2014 of the director of the Diefthynsi Allodapon Thessalonikis (Directorate for Foreign Nationals in Thessaloniki). The reason given for that decision was that the applicant posed a threat to public policy and public security on account of having infringed the exclusion order. As regards the argument concerning the failure to notify the 2011 decision, the Greek authorities stated that any omissions at the stage of notifying that decision could, hypothetically, have constituted a ground for annulment if the decision had been challenged. However, such omissions could not be relied on to challenge the administrative act of 2014.

18. Mr Petrea brought an action for annulment of the decision of 2014 before the referring court.

IV. Questions referred for a preliminary ruling and procedure before the Court

19. In those circumstances, the Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance of Thessaloniki) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

- (1) Are Articles 27 and 32 of [Directive 2004/38] to be interpreted, in the light of Articles 45 and 49 TFEU, and having regard to the procedural autonomy of the Member States and the principles of protection of legitimate expectations and good administration, as meaning that the withdrawal of a certificate of registration as a European Union citizen, previously granted, under Article 8(1) of [Greek] Decree 106/2007, to a national of another Member State, and the imposition on him of a measure for his removal from the host Member State, is required or permitted in circumstances where, although he had been registered in the national list of undesirable aliens and was the subject of an exclusion order on grounds of public policy and public security, that person again entered the Member State concerned and conducted a business, while failing to observe the procedure laid down in Article 32 of Directive 2004/38 for the submission of an application for the lifting of that exclusion order, when the latter (the exclusion order) was imposed on the self-sufficient ground of public policy which justifies the withdrawal of the certificate of registration of a citizen of a Member State?
- (2) In the event of an affirmative answer to the first question, are such circumstances to be treated in the same way as circumstances where a European Union citizen is staying illegally in the territory of the host Member State, so that it is permissible, pursuant to Article 6(1) of [Directive 2008/115], for the body which is competent to withdraw the certificate of registration as a Union citizen to issue a return order, given that (i) the registration certificate does not constitute, as is well established, evidence of a right of legal residence in Greece, and (ii) only third country nationals fall within the scope *ratione personae* of [Directive 2008/115]?
- (3) In the event of a negative answer to the first question, if the competent national authorities, acting within the framework of the procedural autonomy of the host Member State, were to withdraw, on grounds of public policy and public security, the registration certificate of a citizen of another Member State, which does not constitute evidence of a right of legal residence in Greece, and simultaneously impose, on that citizen, an order to return, could that be considered to involve, according to the correct legal classification, one and the same administrative act concerning administrative expulsion under Articles 27 and 28 of Directive 2004/38 subject to judicial review under the conditions laid down in those provisions, which lay down what is possibly the sole means of administrative removal of EU citizens from the territory of the host Member State?
- (4) In the event that the answer to the first and second questions referred for a preliminary ruling is either affirmative or negative, is national legal practice compatible with the principle of effectiveness if that practice prohibits administrative authorities and thereafter courts with jurisdiction, which are seised of a case, from undertaking an examination, in the context of the

withdrawal of a certificate of registration of a Union citizen or the imposition of a measure for the removal from the host Member State on the grounds of the continuing validity of an order excluding the national of another Member State from the Member State concerned, of the extent to which the procedural safeguards of the provisions in Articles 30 and 31 of Directive 2004/38 were observed in the issue of the exclusion order concerned?

- (5) In the event of an affirmative answer to the fourth question, does it follow from Article 32 of Directive 2004/38 that the competent administrative authorities of the Member State are obliged to notify, in all cases, the national of another Member State concerned of the decision ordering his removal in a language which he understands, so that he is in a position properly to exercise the legal rights which he derives from the provisions concerned of the directive, irrespective of whether the relevant application has been submitted by him?

20. Written observations were lodged by the applicant in the main proceedings, by the Governments of Greece, Belgium and the United Kingdom of Great Britain and Northern Ireland, and by the Commission. Mr Petrea, the Governments of Greece, Belgium and the United Kingdom and the Commission appeared at the hearing held on 2 February 2017.

V. Analysis

A. The first question referred

21. By its first question, the national court essentially asks whether a Union citizen, who has entered the territory of a Member State other than the Member State of which he is a national and has obtained there a certificate of registration, notwithstanding the fact that he had previously been the subject of a decision to exclude him from that first Member State and did not observe the procedure laid down in Article 32 of Directive 2004/38, must (or could) have his certificate of registration withdrawn and have a further return order imposed on him.

1. Does Directive 2004/38 require the withdrawal of the certificate of registration and the adoption of a return order?

22. I will examine the two aspects of the question whether Directive 2004/38 imposes an obligation on Member States to withdraw a certificate of registration and to adopt a return order separately, and will begin with the analysis concerning the adoption of a return order. By its third question, the national court enquires whether the withdrawal of a registration certificate and the adoption of a return order can be regarded as one and the same administrative act. However, since Directive 2004/38 does not recognise single acts which relate to both the withdrawal of a certificate and the adoption of a return order, a two-part analysis will allow me to identify, within the context of that directive, a potential source of an obligation to take these two types of measures.

23. I note that only the Commission expressly addressed this point in its written observations, suggesting that the Court should answer in the negative because there is no such obligation under Directive 2004/38.

24. As regards the question whether, under EU law, a Member State is required to adopt a return order in circumstances such as those in the main proceedings, I take the view that Directive 2004/38 does not impose any such obligation. I note that the wording of Article 27(1) of Directive 2004/38 refers only to the 'possibility' of restricting the freedom of movement and residence and, in any event, is not expressed in terms which suggest that such an obligation exists.

25. If Member States are not required to remove individuals who have infringed an exclusion order, does the same apply to the withdrawal of a certificate of registration as a Union citizen?

26. I observe that Directive 2004/38 does not contain any provisions imposing an obligation to annul such certificates. It is thus a matter for each Member State to adopt rules on the obligation to withdraw a certificate issued in error.

27. In the light of the foregoing, there is no obligation under Directive 2004/38 to withdraw a certificate of registration and to adopt a return order.

2. Does Directive 2004/38 permit the withdrawal of a certificate of registration and the adoption of a return order?

28. It is necessary to examine whether, where a person has entered the territory of a Member State even though he was the subject of an exclusion order adopted by the authorities of that Member State, the withdrawal of a certificate of registration and the adoption of a return order are permitted under Articles 45 and 49 TFEU, Articles 27 and 32 of Directive 2004/38 and the principles of the protection of legitimate expectations and good administration.

29. It seems to me that, by means of this question, the referring court seeks to ascertain whether such a person may be the subject of a return order without a review of the conditions laid down in Articles 27 and 28 of Directive 2004/38, even though the latter of those two provisions is not mentioned in the first question referred for a preliminary ruling.⁴

30. The Governments of Greece, Belgium and the United Kingdom as well as the Commission argued that, since an exclusion order was adopted in accordance with Articles 27 and 28 of Directive 2004/38, only an application for lifting of the order, properly submitted under Article 32 of that directive, gives rise to an obligation for the host Member State to conduct a further examination under Articles 27 and 28 of the directive. Mr Petrea disputes that interpretation of EU law.

(a) The freedoms conferred on Union citizens under Articles 45 and 49 TFEU

31. As a preliminary point, I note that, by adopting Directive 2004/38, the EU legislature, in its move away from a sectoral approach,⁵ established a general framework for the exercise of the right to move and reside freely in the territory of the Member States, conferred on Union citizens by Article 21(1) TFEU. This directive was adopted, in particular, on the basis of Articles 40 and 44 of the EC Treaty which dealt with, respectively, measures to secure freedom of movement for workers (Article 39 TEC and Article 45 TFEU) and freedom of establishment (Article 43 TEC and Article 49 TFEU).

32. The objective of Directive 2004/38 is to facilitate the exercise of the right to freedom of movement and residence and to strengthen that right.⁶ However, this right is not unconditional and may be subject to the limitations and conditions imposed by the TFEU and by the measures adopted to give it effect,⁷ particularly those giving effect to Articles 45 and 49 TFEU⁸ and to Article 21 TFEU, namely Directive 2004/38.⁹

4 Article 28 of Directive 2004/38 is invoked in the third question referred, which is raised in the event of a negative answer to the first question.

5 I will return to this point at a later stage in my analysis of the legal nature of a certificate of registration as a Union citizen. See points 40 to 44 of this Opinion.

6 Judgments of 19 September 2013, *Brey* (C-140/12, EU:C:2013:565, paragraph 71 and the case-law cited), and of 18 December 2014, *McCarthy and Others* (C-202/13, EU:C:2014:2450, paragraph 31 and the case-law cited). Also see Candela Soriano, M., 'Libre circulation et séjour dans l'U.E.: la directive 2004/38 au regard des droits de l'homme', *Journal des tribunaux*. Droit européen, No 121, 2005, p. 194.

7 Judgment of 10 July 2008, *Jipa* (C-33/07, EU:C:2008:396, paragraph 21 and the case-law cited).

8 Judgment of 29 April 2004, *Orfanopoulos and Oliveri* (C-482/01 and C-493/01, EU:C:2004:262, paragraph 47).

9 See, to that effect, judgment of 19 September 2013, *Brey* (C-140/12, EU:C:2013:565, paragraph 70).

33. The right to move and reside of Union citizens, who enjoy the freedoms referred to in Articles 45 and 49 TFEU, may therefore be restricted to the extent provided for by Directive 2004/38.

(b) Assessment of the effects of an exclusion order within the framework of Directive 2004/38

34. First of all, it must be pointed out that exclusion orders are restrictive measures recognised under Directive 2004/38.

35. It is apparent from Article 27 of Directive 2004/38, read in the light of Article 32 thereof, that exclusion orders are not, in principle, contrary to EU law, provided that they are adopted solely on grounds of public policy, public security or public health, are not unlimited in nature and may be lifted in accordance with Article 32 of Directive 2004/38.

36. It should be recalled that, under Article 31(4) of Directive 2004/38, Member States may exclude the individual concerned from their territory pending the redress procedure against a measure restricting his rights under that directive. However, a person subject to such a measure may ask to be heard in person by the competent court. It might be possible to argue that, during the redress procedure, the presence of the individual concerned must therefore be permitted to ensure that he receives a fair hearing and is able to present all his grounds of defence.¹⁰

37. By contrast, under Article 32(2) of Directive 2004/38, persons subject to an exclusion order have no right of entry to the territory of the Member State concerned while their application for lifting of the order is being considered.

38. It should be observed that, in the Schengen area — where there are no systematic checks within the European Union — it is difficult to monitor compliance with exclusion orders by Union citizens. A person subject to this type of measure may therefore attempt to enter the territory of the Member State concerned. If the authorities of that Member State were required to assess again whether the individual could be removed on grounds of public policy, the situation of a person to whom an exclusion order applies would be the same as a Union citizen who had never been the subject of a measure of that kind. With a view to curbing such possible ‘misuse’,¹¹ within the context of Directive 2004/38, an exclusion order seeks to restrict the rights of entry¹² and residence in their entirety for a specified period.

39. In order to eliminate the effects of such exclusion, restore his rights of entry to the territory of the Member State concerned and legalise his stay, the person concerned must submit, in accordance with Article 32(1) of Directive 2004/38, an application for lifting of the exclusion order.

10 See, to that effect, the proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2001) 257 final. Also see, in view of the fact that Article 31(4) of Directive 2004/38 codified a principle developed by the Court in its case-law, judgment of 5 March 1980, *Pecastaing* (98/79, EU:C:1980:69, paragraph 12). In his Opinion in *Pecastaing* (98/79, not published, EU:C:1980:32, p. 725), Advocate General Capotorti adopted a stricter position to the effect that the person concerned’s grounds of defence could be submitted through his lawyer.

11 See the proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2001) 257 final.

12 In its judgment of 18 May 1982 in *Adoui and Cornuaille* (115/81 and 116/81, EU:C:1982:183, paragraph 12), which provided inspiration for the wording of Article 32(2) of Directive 2004/38, the Court stated that ‘where ... a [removal] decision ... continues to be legally effective so as to exclude [the person concerned] from the territory of the state in question, [EU] law contains no provision conferring upon him a right of entry into that territory during the examination of his further application’. Emphasis added.

(c) Scope of Article 27 of Directive 2004/38

(1) Withdrawal of a certificate of registration

(i) Legal effects of a certificate of registration

40. Must the issue of the certificate of registration in 2013 be considered to eliminate the legal effects of the exclusion order adopted in 2011, with the result that it was necessary to review whether the conditions laid down in Article 27(1) and (2) of Directive 2004/38 were satisfied in order to restrict Mr Petrea's rights again?

41. According to settled case-law beginning with the *Royer* judgment, the rights of nationals of a Member State to enter the territory of another Member State and reside there stem from primary EU law and are therefore acquired independently of any administrative formality.¹³ This approach was recently reaffirmed in *Dias*.¹⁴

42. It is true that that position was taken in relation to an earlier legal framework within which the relevant rights were granted only to nationals of Member States pursuing an economic activity in a cross-border context. However, I think that the same approach should be taken after the entry into force of the Maastricht Treaty, which incorporated the concept of Union citizenship into the EC Treaty.

43. When it adopted Directive 2004/38, the European legislature did not intend to establish a new system. On the contrary, it sought to consolidate and codify existing principles deriving from legislation and the case-law of the Court.¹⁵

44. The initial draft of Directive 2004/38 stated that the 'right of residence shall be *evidenced* by a certificate of registration, issued on the spot'.¹⁶ Nonetheless, it can be inferred from the explanatory memorandum to the proposal for Directive 2004/38 that the certificate of registration referred to in Article 8(2) thereof — like the residence permit in *Royer* — is simply a document recording a pre-existing right. The intention of following the Court's case-law on the legal nature of this certificate was reaffirmed during the *travaux préparatoires* relating to Directive 2004/38. The wording of Article 8(2) of the proposal for Directive 2004/38, which stated that the certificate of registration established a right, was redrafted to make clear that the certificate simply recorded the existence of a right.¹⁷

45. I can conclude at this stage that the certificate of registration issued by the Greek authorities is simply declaratory in nature and does not give rise to the acquisition of any of the rights referred to in Directive 2004/38. It follows that the exclusion order produces its effects notwithstanding the fact that the Greek authorities issued that certificate to Mr Petrea.

¹³ Judgment of 8 April 1976 (48/75, EU:C:1976:57, paragraphs 31 to 33).

¹⁴ Judgment of 21 July 2011 (C-325/09, EU:C:2011:498, paragraph 48). In that judgment, the Court held that it was not possible to consider, on the basis solely of a residence permit issued pursuant to Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ English Special Edition 1968 (II), p. 485), periods of residence in a host Member State to have been completed legally for the purposes of acquiring the right of residence within the framework of Article 16(1) of Directive 2004/38.

¹⁵ Hanf, D., 'Le développement de la citoyenneté de l'Union européenne', *La Libre Circulation Des Personnes: États Des Lieux Et Perspectives. Acte d'un colloque organisé en 2003 à Liège*, Brussels, P.I.E. Peter Lang S.A. 2007, pp. 20 and 21; Guild, E., Peers, S., Tomkin, J., *The EU Citizenship Directive. A Commentary*, Oxford, Oxford University Press 2014, pp. 87 to 91 and pp. 111 to 118.

¹⁶ Emphasis added.

¹⁷ See amendment 33 and the considerations underlying it in the amended proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2003) 199 final, pp. 6 and 22. Also see recital 11 of Directive 2004/38.

(ii) The possibility of withdrawing a certificate of registration issued in error

46. Is it possible to withdraw a certificate of registration issued to a Union citizen without a prior review conducted in accordance with the conditions laid down in Article 27 of Directive 2004/38?

47. Directive 2004/38 does not mention any measure by which such a certificate may be withdrawn. It follows from my analysis on the declaratory nature of certificates of registration that a certificate issued in error does not eliminate, in essence, the legal effects of an exclusion order. Consequently, if an exclusion order adopted on grounds of public policy or public security, which was validly made in accordance with EU law, continues to produce its effects, the Member State is not required to examine whether one of the reasons set out in Article 27 of Directive 2004/38 continues to exist in order to withdraw such a certificate. That review may be conducted only in the context of an application for lifting of an exclusion order provided for in Article 32(1) of the directive.

48. In the light of the foregoing, I consider that Directive 2004/38 does not preclude the withdrawal of a certificate of registration issued in error to a Union citizen who has entered the territory of the host Member State even though he was the subject of an exclusion order.

(2) Adoption of a return order

(i) Return orders imposed on the grounds of infringement of an exclusion order within the framework of Directive 2004/38

49. Does a return order imposed due to the infringement of an exclusion order fall within the scope of Article 27 of Directive 2004/38?

50. On the one hand, it should be noted that the measure at issue is designed to remove the individual from the territory of the host Member State, which suggests that it falls within the scope of Article 27 of Directive 2004/38. It could therefore be argued that, before adopting a return decision, the host Member State must take account of the circumstances set out in Article 27(1) and (2) of that directive. In other words, on that view, the national authorities would be required, in particular, to assess the continued existence and proportionality of the reasons justifying the imposition of a return order against the individual in question.

51. On the other hand, in the main proceedings, Mr Petrea was the subject of an exclusion order in 2011. Consequently, after he was actually removed, his rights of entry and residence were restricted for the period prescribed by the measure at issue. Thus, the 2014 return decision did not restrict Mr Petrea's rights but ensured the effectiveness of the 2011 exclusion order. I observe that Article 27 of Directive 2004/38 appears in Chapter VI of that directive, entitled 'Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health'. It may therefore be thought that this article concerns only measures restricting the rights conferred on Union citizens. If we were to accept that interpretation of the scope of Article 27 of Directive 2004/38 — as the United Kingdom Government did, which stated in its written observations that a decision following upon an exclusion order 'does not of itself constitute a measure for the purposes of Article 27(2), or ... for the purposes of Article 28 [of Directive 2004/38]' — it would follow that the 2014 return decision, despite its nature which assimilates it to the 2011 decision, does not fall within the scope of Article 27 of Directive 2004/38. It would therefore be a matter for domestic legislatures to adjust all of the rules relating to measures following upon an exclusion order.

52. I am not persuaded by that approach.

53. First, Article 27 of Directive 2004/38 was given quite a broad scope. The initial draft wording of Article 27(1) of that directive, which referred only to ‘decisions whereby Union citizens and their family members ... are refused entry or expelled’,¹⁸ was amended during the proposal’s legislative passage so as to cover ‘all types of decision restricting freedom of movement’, namely ‘all types of measure — removal, refusal of leave to enter the territory and refusal to leave’.¹⁹

54. Secondly, it should be recalled that the wording of Article 27 of Directive 2004/38 does not simply and exclusively cover measures restricting ‘rights’ under that directive, but encompasses, in more general terms, all measures restricting ‘the freedom of movement and residence’.

55. Thirdly, the provisions of Chapter VI of Directive 2004/38 also concern persons whose rights of entry or residence have previously been restricted by a measure validly taken in accordance with EU law.²⁰

56. In the light of the foregoing reasoning, I consider that a return order following upon an exclusion order falls within the scope of Article 27 of Directive 2004/38. Nevertheless, I take the view that the adoption of such a measure does not require a prior examination of the continued existence of the reasons which justified the adoption of the exclusion order.

(ii) Continued existence of the reasons justifying the adoption of a return order

57. The Court has already stated — with reference to Directive 64/221/EEC,²¹ which preceded Directive 2004/38 — that EU law ‘precludes a national practice whereby the national courts may not take into consideration, in reviewing the lawfulness of the expulsion of a national of another Member State, *factual matters which occurred after the final decision of the competent authorities* which may point to the cessation or the substantial diminution of the present threat which the conduct of the person concerned constitutes to the requirements of public policy’.²²

58. I note that this approach was incorporated into several provisions of Directive 2004/38. Article 27(2) of that directive requires that ‘measures taken on grounds of public policy or public security’ must be based, in particular, on the prevailing circumstances of the individual subject to those measures. The same approach is reflected in the wording of Article 33(2) of Directive 2004/38, which provides that if a removal decision is enforced more than two years after it was taken, a new assessment of the situation of the individual concerned at the time of enforcement of that decision must be carried out.

59. These three references to the case-law and legislative provisions do not concern exclusion orders. I recall that such orders produce, by their very nature, lasting legal effects. Those effects would be eliminated if, even after the infringement of an exclusion order, the authorities were required to review whether the reasons justifying the imposition of the order continued to exist.

18 Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2001) 257 final.

19 See amendment 71 and the considerations underlying it in the amended proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2003) 199 final, p. 8, 329. As has been stated in legal literature, the wording used in Article 27(1) of Directive 2004/38 is very neutral and can be interpreted as covering all kinds of restrictions – see, in relation to a prohibition on leaving the territory, Łazowski, A., “‘Darling you are not going anywhere’: the right to exit and restrictions in EU law”, *European Law Review* 2015, vol. 40, n° 6, p. 891.

20 See Article 32(1) and Article 33(2) of Directive 2004/38.

21 Council Directive of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition, Series I, 1963-1964, p. 117).

22 Judgment of 29 April 2004, *Orfanopoulos and Oliveri* (C-482/01 and C-493/01, EU:C:2004:262, paragraphs 81 and 82).

60. In the light of all the foregoing, at this stage, I find that it is not apparent from a combined reading of the provisions of Directive 2004/38 that EU law precludes a return order adopted without a prior review of the conditions laid down in Articles 27 and 28 of that directive against a person who has infringed an exclusion order.

(d) Principle of legitimate expectations

61. Can an individual rely on the principle of legitimate expectations in order to have the effects of an order excluding him from the territory of the host Member State eliminated in circumstances such as those in the main proceedings?

62. It should be recalled that the right to rely on the protection of legitimate expectations extends to all individuals who have been given precise, unconditional and consistent assurances originating from authorised and reliable sources.²³ According to settled case-law, the traditional interpretation of this principle imposes certain limits on the retroactive withdrawal of an unlawful administrative act. However, these considerations concern, above all, acts which create individual rights.²⁴

63. As explained above, certificates of registration do not grant Union citizens the right of residence. Since the issue of a certificate does not create any right of residence or of entry, it cannot therefore give rise to any expectation, including a legitimate expectation.

64. Nevertheless, even if a different interpretation were to be applied according to which acts which do not create rights may give rise to expectations deserving of protection under EU law,²⁵ it could be concluded that Mr Petrea's expectations did not merit such protection.

65. In any event, the principle of the protection of legitimate expectations is based on a balance between individual interests and general public policy interests.²⁶ In the instant case, the protection stemming from this principle could be granted to Mr Petrea only if it allowed these two sets of interests to be weighed against each other.

66. The principle of legitimate expectations is often qualified by the assertion that the withdrawal of an administrative act is permissible if the authority that issued the act in question does so within a reasonable period of time. The length of that period may be relevant for the purpose of assessing the balance between the interests in question. In any event, the question whether the withdrawal period is reasonable must be assessed in the light of the individual circumstances of each case. However, my view is that where the decision at issue does not create rights, the period deemed to be 'reasonable' should be substantially longer than the period which would be sufficient to protect expectations arising from an act creating individual rights.²⁷

23 See judgment of 7 June 2005, *VEMW and Others* (C-17/03, EU:C:2005:362S, paragraphs 73 and 74 and the case-law cited). Also see, to that effect, my Opinion in *Evonik Degussa v Commission* (C-162/15 P, EU:C:2016:587, points 183 and 184). On the development of this principle in the case-law of the Court, see Rideau, J., *L'Union européenne et les droits de l'homme*, Recueil des Cours de l'Académie de La Haye, vol. 265, 1997, pp. 173 to 177, and Lemańska, J., *Uzasadnione oczekiwania w perspektywie prawa krajowego i regulacji europejskich*, Wolters Kluwer, Warsaw, 2016, pp. 41 to 46.

24 Judgment of 12 July 1957, *Algera and Others v Common Assembly* (7/56 and 3/57 to 7/57, EU:C:1957:7, p. 56).

25 See judgment of 12 July 1962, *Koninklijke Nederlandsche Hoogovens en Staalfabrieken v High Authority* (14/61, EU:C:1962:28, p. 272). Also see Schönberg, S., *Legitimate Expectations in Administrative Law*, Oxford University Press, Oxford, 2000, p. 117, and Ritleng, D., 'Le retrait des actes administratifs contraires au droit communautaire', *Bestand und Perspektiven des Europäischen Verwaltungsrechts*, Nomos, Baden-Baden, 2008, p. 243.

26 See, to that effect, judgment of 12 July 1962, *Koninklijke Nederlandsche Hoogovens en Staalfabrieken v High Authority* (14/61, EU:C:1962:28, p. 272).

27 In its judgment of 12 July 1962, *Koninklijke Nederlandsche Hoogovens en Staalfabrieken v High Authority* (14/61, EU:C:1962:28 p. 273), the Court stated that the test of 'the reasonable period of time' may be of considerable importance where decisions creating individual rights are concerned, whilst its importance is diminished in cases involving decisions recording the existence of rights.

67. In addition, less than thirteen months elapsed between the issue of the certificate of registration to Mr Petrea and the adoption of a return order. Under Article 33(2) of Directive 2004/38, where a removal decision is enforced more than two years after it was taken, the Member State has to check that the reasons which justified the adoption of that decision continue to exist and are genuine. Within the context of Directive 2004/38, the expiry of a period of two years requires Member States to review the continued validity of a removal order but not that of an exclusion order which produces, by its very nature, lasting legal effects. Thus, there is nothing to suggest that, in the main proceedings, the withdrawal of the certificate of registration and the adoption of a return order are in clear conflict with the principle of the protection of legitimate expectations.

68. In any case, it is a matter for the referring court to determine whether Mr Petrea's potential expectations may be classified as 'legitimate' and whether they are deserving of individual protection in the light of the circumstances.

69. In short, my view is that, in principle, the issue of a certificate of registration is not capable of giving rise to a legitimate expectation. However, it is for the referring court to determine whether the principle of the protection of legitimate expectations precludes the withdrawal of the certificate of registration in circumstances such as those in the main proceedings.

(e) Principle of good administration

70. In its request for a preliminary ruling, the Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance of Thessaloniki) did not explain why the principle of good administration might be relevant for the purpose of replying to its first question.

71. This question concerns the possibility of withdrawing a certificate of registration and adopting a return order without a fresh prior examination of the conditions laid down in Articles 27 and 28 of Directive 2004/38.

72. It is therefore plausible to assume that, by mentioning the principle of good administration, the referring court was enquiring about the relevance of the duty of care in circumstances such as those in the main proceedings.²⁸ This duty requires a thorough assessment to be conducted which takes account of the situation of the person concerned every time an adverse decision affecting him is taken.²⁹

73. However, I am not convinced that this approach can be taken in the instant case where an exclusion order has not ceased to produce its effects. It would, as I have already pointed out,³⁰ essentially deprive the exclusion order of its legal effects. Consequently, the principle of good administration cannot be used to circumvent the effects of an exclusion order validly adopted by the national authorities in the circumstances of the main proceedings.

74. In the light of the foregoing, I take the view that, in circumstances such as those in the main proceedings, the withdrawal of a certificate of registration and the adoption of a return order are not contrary to EU law.

²⁸ Different approaches to the relationship between the principle of good administration and the duty of care can be found in the case-law and in legal literature. The principle of good administration and the duty of care are viewed as both separate and similar concepts. In spite of these differences in opinion, it seems to me that, according to the majority view, these concepts are at least linked.

²⁹ As regards this principle, see judgments of 11 July 1974, *Guillot v Commission* (53/72, EU:C:1974:80, paragraph 3), and of 28 May 1980, *Kuhner v Commission* (33/79 and 75/79, EU:C:1980:139, paragraph 23).

³⁰ See point 38 of this Opinion.

B. The second question referred

75. By its second question, the national court seeks to ascertain whether the adoption of common standards for third country nationals referred to in Directive 2008/115 and Union citizens affected by Directive 2004/38 is in accordance with EU law.

76. The Greek and Belgian Governments as well as the Commission replied to that question in the affirmative. The Government of the United Kingdom simply stated that Directive 2008/115 applies only to third country nationals staying illegally on the territory of a Member State, with which the Danish Government agreed. Mr Petrea did not make any express submissions on this point.

1. General remarks

77. Directive 2004/38 lays down a number of procedural rules with which Member States must comply if they are to restrict a Union citizen's right of residence, namely those set out in Articles 30 and 31. However, that directive does not contain provisions on the detailed rules governing administrative and judicial proceedings relating to decisions terminating the right of a Union citizen to reside in the territory of the host State. According to the Court's settled case-law, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish such detailed rules, ensuring, however, that they are not less favourable than the rules governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness).³¹

78. I see no reason why it should not be possible for a Member State to rely on the provisions transposing Directive 2008/115 into national law provided that the protection established by Directive 2004/38 and the principles of equivalence and effectiveness are observed, this being a matter for the national court to assess.

79. It is true that Directives 2004/38 and 2008/115 do not have the same object. However, I am not persuaded by the view that the approach taken in Directive 2008/115 cannot be followed *mutatis mutandis* in order to establish the applicable procedural rules for Union citizens.

80. That view is based on the idea that the procedural approach to third country nationals does not provide a sufficient level of respect for rights to ensure an appropriate level of protection of Union citizens' procedural rights. In that respect, regard should be had to the wording of Article 1 of Directive 2008/115, which provides that the directive 'sets out common standards and procedures to be applied in Member States ... *in accordance with fundamental rights as general principles of Community law as well as international law*'.³²

81. In the light of the foregoing, I find that EU law does not preclude, in principle, the use of rules concerning third country nationals for the purpose of establishing the system applying to Union citizens.

82. However, notwithstanding these general considerations, the second question referred comprises two parts relating to, first, the authority with competence to issue a return decision in respect of a Union citizen and, secondly, the possibility of adopting such a decision as a measure following upon the infringement of an exclusion order.

³¹ Judgment of 17 March 2016, *Bensada Benallal* (C-161/15, EU:C:2016:175, paragraphs 23 and 24). Also see the Opinion of Advocate General Bot in *ZZ* (C-300/11, EU:C:2013:363, points 83 and 84).

³² Emphasis added.

2. The competent authority

83. According to the information contained in the reference for a preliminary ruling, the authority that issued the administrative act of 2014 (the deputy head of the Department for Foreign Nationals) is not one of the bodies with competence to adopt return decisions against third country nationals.

84. I note that Directive 2004/38 does not include any details on the organisational structure of the authorities. In that connection, I share the view of the Commission which — referring to its content — stated that Directive 2004/38 only mentions ‘competent authorities’ and ‘relevant authorities’.³³ Thus, I see no potential infringement of EU law as long as the authorities in question have the power to adopt the measures at issue, in all cases whilst observing the rights and procedural safeguards imposed by Directive 2004/38.

3. Measures following upon the infringement of an exclusion order

85. The referring court noted that, under Article 6(1) of Directive 2008/115, Member States are to issue a return decision to any third-country national staying illegally on their territory, meaning that a return decision flows from the unlawful nature of the stay and is not based on grounds of public policy or national security.

86. However, as stated above in my analysis of the first question referred,³⁴ a return decision — in circumstances such as those in the main proceedings — is confined to implementing the effects of an exclusion order. In relation to that purpose, Article 27 of Directive 2004/38, read in the light of Article 32 thereof, and the rule flowing from Article 6 of Directive 2008/115 originate from one and the same rule. Consequently — and restricting my observations to the situation where an exclusion order has been infringed — I consider that the national legislature may adjust the provisions of Directive 2008/115 in order to adopt rules concerning Union citizens.

87. Accordingly, I suggest giving the following answer to the second question referred for a preliminary ruling: Directive 2004/38 does not preclude the use of the content of Directive 2008/115 for the purposes of laying down detailed rules governing the procedures applying to an order to return a Union citizen who has entered the territory of the Member State concerned even though an exclusion order in respect of him has not ceased to produce its effects, provided that the protective measures and procedural safeguards set out in Directive 2004/38, particularly in Chapter VI thereof, as well as the principles of equivalence and effectiveness are observed, this being a matter for the national court to assess.

C. The third question referred

88. The national court raises the third question in the event of a negative answer to the first. I will nonetheless continue my analysis in case the Court does not share my view on the first question.

89. By its third question, the referring court essentially enquires whether, if the national authorities, acting within the framework of procedural autonomy, were to withdraw, on grounds of public policy and public security, the registration certificate of a citizen of another Member State, they could simultaneously impose on that citizen a return order without any review by a court in accordance with the conditions laid down in Articles 27 and 28 of Directive 2004/38.

³³ See Article 8(1) and recitals 12 and 14 of Directive 2004/38.

³⁴ See point 38 of this Opinion.

90. If the Court were to answer the first question referred in the negative and were to decide that, in circumstances such as those in the main proceedings, the adoption of a return order is not a consequence of the infringement of an exclusion order, this would mean that the return order could not escape the judicial review provided for in Articles 27 and 28 of Directive 2004/38.

91. It is for the national legislature to decide whether the withdrawal of such a certificate and the adoption of a return decision constitute one and the same act. The joining together of these two measures cannot, however, jeopardise the principle that the adoption of a return order must be preceded by a review by court.

92. In the light of these considerations, in the event of a negative answer to the first question referred for a preliminary ruling, I propose that the Court reply to the third question as follows: the adoption of a return decision against a Union citizen who has infringed an exclusion order must be subject to the judicial review provided for in Articles 27 and 28 of Directive 2004/38.

D. The fifth question referred

93. The last question is raised only if the Court replies to the fourth question in the affirmative.

94. The fourth question referred for a preliminary ruling seeks to determine whether a defect at the stage of notifying a decision — namely the failure to translate its content into a language the person concerned understands — can be pleaded in an action challenging a measure following upon that decision. The Court need only reply to the fourth question referred if its answer to the fifth question is that the exclusion order does not have to be notified in a language the person concerned understands where that person has not submitted an application to that effect. I will therefore examine the fifth and last question referred for a preliminary ruling before addressing the fourth question.

95. By its fifth question, the national court enquires whether Directive 2004/38 requires the authorities of the host Member State to notify, in all cases, a citizen of another Member State of the ‘decision ordering his removal’ in a language he understands, irrespective of whether he has submitted an application to that effect.

96. It is apparent from the request for a preliminary ruling that this question was raised in relation to Article 32 of Directive 2004/38. This article only concerns exclusion orders adopted on grounds of public policy, public security or public health.³⁵ It does not impose any specific requirements as regards the notification of exclusion decisions. On the other hand, Article 30 of Directive 2004/38 lays down rules on the notification of all measures taken under Article 27 of the directive, including exclusion orders referred to in Article 32 thereof. I therefore consider that exclusion decisions fall within the scope of Article 30 of Directive 2004/38, which defines, in general terms, the procedures for notifying such decisions.

97. According to the Greek, Belgium, Danish and United Kingdom Governments as well as the Commission, Article 30 of Directive 2004/38 does not require the decision on exclusion to be notified in a language the person concerned understands, if he has not submitted an express application to that effect, but requires that the decision be notified in such a way that the person is able to comprehend its content and the implications for him. By contrast, Mr Petrea asserts that the authorities are required to notify the person concerned of ‘the decision to remove him in a language he understands’, irrespective of whether or not he has submitted an application.

³⁵ I note in that context that the concept of ‘public health’ does not appear in all language versions of Article 32 of Directive 2004/38.

98. Article 30(1) of Directive 2004/38 provides that ‘the persons concerned shall be notified in writing of any decision taken ... in such a way that they are able to comprehend its content and the implications for them’, while paragraph 2 of that articles states that, in principle, ‘the persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based’.

99. The explanatory memorandum to the proposal for Directive 2004/38 is clear as regards the legislature’s source of inspiration and in that connection refers to the provisions of Directive 64/221 and the case-law of the Court.³⁶

100. Specifically, Article 30(1) of Directive 2004/38, which reproduces part of the wording of the first paragraph of Article 7 of Directive 64/221, is based on the judgment in *Adoui and Cornuaille*.³⁷ In that judgment, the Court held that a decision does not necessarily have to be translated into the language of the person concerned, particularly where it is a lesser known language, but that the Member State must take all relevant measures to ensure that he understands the content and effect of the decision.

101. This approach was called into question by the Economic and Social Committee during the *travaux préparatoires*. The Committee observed that the explanatory memorandum in the proposal for Directive 2004/38 contradicted the initial text of that directive, namely Article 28(2) of that text, according to which the decision is to be made known to the person concerned in such a way that he is able to comprehend its content and implications, because it stated that a decision did not necessarily have to be translated into the language of the person concerned.³⁸ The wording of that article, now Article 30(1) of Directive 2004/38, has not been amended in that regard. Consequently, it seems to me that the legislature did not alter the position stated in the explanatory memorandum and did not consider the translation of every decision to be necessary.

102. One might wonder how the national authorities would be able to determine which language the person concerned understands if he has not submitted an express application to that effect. In that context, it should be noted that Article 30 of Directive 2004/38, read in conjunction with Article 27(1) thereof, concerns not only Union citizens but also their family members, irrespective of their nationality.

103. I therefore propose that the Court give the following answer to the fifth question referred for a preliminary ruling: Article 30 of Directive 2004/38 does not require the authorities of the host Member State to notify a citizen of another Member State of a decision to exclude him in a language he understands if that citizen has not submitted an application to that effect, provided, however, that the host Member State takes all relevant measures to ensure that he understands the content and effect of the decision.

E. The fourth question referred

104. In case the Court does not agree with my analysis of the fifth question and takes the view that EU law requires the authorities of the host Member State to notify a citizen of another Member State of the decision ordering his removal in a language he understands, I will examine the fourth question referred for a preliminary ruling.

³⁶ Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2001) 257 final.

³⁷ Judgment of 18 May 1982 (115/81 and 116/81, EU:C:1982:183, paragraph 13).

³⁸ Opinion of the Economic and Social Committee on the ‘Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States’, COM(2001) 257 final, paragraph 4.8.2.

105. By this question, the national court asks whether national legal practice is compatible with the principle of effectiveness if that practice prohibits the authorities concerned from assessing, in the context of the withdrawal of a certificate of registration of a Union citizen or the adoption by the host Member State of a removal order on the ground of the continuing validity of an order excluding the national of another Member State from the Member State concerned, the extent to which the procedural safeguards of Articles 30 and 31 of Directive 2004/38 were observed in the adoption of the exclusion order.

106. It seems to me that, by this question, the national court seeks to ascertain whether EU law requires Member States to review the initial decision to exclude whenever a measure following upon that decision is taken.

107. I note that the national court refers to a ‘measure for ... removal’ in the fourth question. However, in my opinion, it intended to refer — as in the first question — to a return order following upon an exclusion order.

108. The Greek and Belgian Governments, with express reference to legal certainty, as well as the United Kingdom Government, submit that this question should be answered in the negative. By contrast, Mr Petrea and the Commission contest that approach, claiming that that solution is potentially incompatible with the principle of effectiveness.

109. Under Article 31(1) of Directive 2004/38, a person subject to an exclusion order on grounds of public policy, public security or public health must have access to judicial redress procedures. Consequently, I consider that, in circumstances such as those in the main proceedings, Mr Petrea was entitled to plead lack of translation when the 2011 decision was notified on the basis of Article 31 of Directive 2004/38.

110. However, Directive 2004/38 requires Member States to observe the procedural safeguards established in Article 31 only ‘at the time when the [restrictive decisions] are adopted’.³⁹ I take the view that this obligation applies until such decisions have become final. That approach is in line with the case-law of the Court, which has already acknowledged that the finality of an administrative decision contributes to legal certainty, with the consequence that EU law does not require that an administrative body be, in principle, under an obligation to reopen an administrative decision which has become final.⁴⁰

111. Where an exclusion order has become final, a Union citizen may submit an application to have it lifted, in accordance with Article 32(1) of Directive 2004/38.⁴¹ That provision seeks to ensure that the exclusion in question may be lifted after a reasonable time, but only, as set out in Directive 2004/38, in the light of the circumstances postdating the adoption of such a measure.⁴²

112. Thus, in my opinion, the approach taken under domestic law according to which a measure which has become final may not be reviewed in proceedings concerning a subsequent measure is not contrary to Directive 2004/38.

39 Judgment of 4 October 2012, *Byankov* (C-249/11, EU:C:2012:608, paragraphs 54 to 56).

40 See judgment of 4 October 2012, *Byankov* (C-249/11, EU:C:2012:608, paragraph 76).

41 See judgment of 17 June 1997, *Shingara and Radiom* (C-65/95 and C-111/95, EU:C:1997:300, paragraphs 39 and 41), in which the Court, referring to its judgment of 18 May 1982, *Adoui and Cornuaille* (115/81 and 116/81, EU:C:1982:183) — which, as indicated in footnote 12, inspired Article 32(2) of Directive 2004/38 — stated: ‘the fact that in respect of a previous decision a Community national failed to appeal or the independent competent authority did not give an opinion ... cannot prevent examination of a fresh application made by such a person.’

42 Pérez van Kappel, A., ‘La libre circulación de personas sin motivos económicos tras la adopción de la Directiva 2004/38/CE y a la luz de la jurisprudencia del Tribunal de Justicia’, *Estudios de Derecho Judicial*, vol. 132, 2007, p. 139.

113. In any event, the rules on redress procedures challenging measures that restrict the freedom of movement and residence must observe the principles of equivalence and effectiveness. There is nothing in the information set out in the decision to refer to suggest that these principles were not observed. At the very least, it is a matter for the national court to assess whether or not the rules in question conflict with the principles of equivalence and effectiveness. Consequently, I propose that the Court give the following answer to the fourth question referred for a preliminary ruling: Directive 2004/38 does not preclude national practices or rules which — within the context of the withdrawal of a certificate of registration of a Union citizen or the adoption by the host Member State of a return order following upon the infringement of an exclusion order imposed on a national of another Member State — prevent an assessment of the extent to which the procedural safeguards stemming from Articles 30 and 31 of Directive 2004/38 were complied with when the decision to exclude was adopted, provided that these rules or national practices do not conflict with the principle of equivalence or the principle of effectiveness.

VI. Conclusion

114. In the light of the foregoing considerations, I propose that the Court should answer the questions referred by the national court as follows:

- (1) 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, as amended by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 (corrigendum OJ 2004 L 229, p. 35), and the principles of legitimate expectations and good administration do not preclude the withdrawal of the certificate of registration of a citizen of a Member State issued by another Member State or the adoption by the latter of a return order against that citizen where, notwithstanding the fact that he had been the subject of an exclusion order adopted by the host Member State on grounds of public policy and public security which has not ceased to produce its effects, the citizen in question enters the territory of the host Member State again.
- (2) Directive 2004/38 does not preclude the use of the content of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals for the purposes of laying down detailed rules governing the procedures applying to an order to return a citizen of a Member State who has entered the territory of another Member State, notwithstanding the existence of an exclusion order adopted by the latter, provided that the protective measures and procedural safeguards set out in Directive 2004/38, particularly in Chapter VI thereof, as well as the principles of equivalence and effectiveness are observed, this being a matter for the national court to assess.
- (3) Article 30 of Directive 2004/38 does not require the authorities of the host Member State to notify a citizen of another Member State of decision to exclude him in a language he understands if that citizen has not submitted an application to that effect, provided, however, that the host Member State takes all relevant measures to ensure that he has understood the content and effect of the decision.
- (4) Directive 2004/38 does not preclude national practices or rules which — within the context of the withdrawal of a certificate of registration of a Union citizen or the adoption by the host Member State of a return order following upon the infringement of an exclusion order imposed on a national of another Member State — prevent an assessment of the extent to which the

procedural safeguards stemming from Articles 30 and 31 of Directive 2004/38 were complied with when the decision to exclude was adopted, provided that these national practices or rules do not conflict with the principle of equivalence or the principle of effectiveness.