Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

10 March 2022 *

(Reference for a preliminary ruling – Right to move and reside freely within the territory of the Member States – Article 21 TFEU – Directive 2004/38/EC – Article 7(1)(b) and Article 16 – Child who is a national of a Member State staying in another Member State – Right of residence derived from the parent who is the primary carer of that child – Requirement of comprehensive sickness insurance cover – Child having a permanent right of residence for part of the periods concerned)

In Case C-247/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Social Security Appeal Tribunal (Northern Ireland) (United Kingdom), made by decision of 11 March 2020, received at the Court on 7 April 2020, in the proceedings

VI

v

The Commissioners for Her Majesty's Revenue & Customs,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, C. Lycourgos, President of the Fourth Chamber, I. Jarukaitis, M. Ilešič (Rapporteur) and A. Kumin, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– VI, initially by R. Drabble QC, and M. Black, Solicitor, and subsequently by R. Drabble QC, and by C. Rothwell and S. Park, Solicitors,

– the Norweigan Government, by K. Moe Winther, L. Furuholmen and T. Hostvedt Aarthun and by T. Midttun Tobiassen, acting as Agents,

* Language of the case: English.

– the European Commission, by E. Montaguti and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 September 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 21 TFEU and of Articles 7 and 16 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35).

2 The request has been made in proceedings between VI and the Commissioners for Her Majesty's Revenue & Customs (United Kingdom) ('HMRC') concerning VI's right to reside in the United Kingdom during the periods from 1 May 2006 to 20 August 2006 and from 18 August 2014 to 25 September 2016 and to receive, for these periods, Child Tax Credit and Child Benefit.

Legal context

European Union law

Directive 2004/38

3 Recitals 1, 2, 10 and 18 of Directive 2004/38 are worded as follows:

'(1) Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect.

(2) The free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty.

…

(10) Persons exercising their right of residence should not … become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore, the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions.

…

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

4 In accordance with Article 1(a) and (b) thereof, Directive 2004/38 covers the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members and the right of permanent residence in the Member States.

5 Article 2 of that directive, headed 'Definitions', provides:

'For the purpose of this Directive:

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

(2) "family member" means:
(a) the spouse;
(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);
(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

…'

6 Chapter III of that directive contains, in Articles 6 to 15 thereof, the provisions relating to the right of residence.

7 Article 7 of that directive, headed 'Right of residence for more than three months', provides in paragraphs 1 and 2:

'1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

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

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

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

– have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members

not to become a burden on the social assistance system of the host Member State during their period of residence; or

(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

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

8 Article 12 of Directive 2004/38, entitled 'Retention of the right of residence by family members in the event of death or departure of the Union citizen', provides in the second subparagraph of paragraph 2:

'Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. …'

9 Article 14 of that directive, entitled 'Retention of the right of residence', states in the first subparagraph of paragraph 2:

'Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.'

10 Chapter IV of that directive contains, in Articles 16 to 21 thereof, the provisions governing the right of permanent residence.

11 Section I of Directive 2004/38, entitled 'Eligibility', contains Article 16(1) and (2), which provides as follows:

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

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

Regulation (EU) No 492/2011

12 Recital 1 of 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) reads as follows:

'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)] has been substantially amended several times. In the interests of clarity and rationality the said Regulation should be codified.'

13 Under Article 10 of Regulation No 492/2011, which corresponds to Article 12 of Regulation No 1612/68:

'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.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.'

Withdrawal Agreement

14 By Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [(EAEC)] (OJ 2020 L 29, p. 1), the Council of the European Union approved that agreement on behalf of the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7) ('the Withdrawal Agreement'), which was attached to that decision.

15 Article 86 of the Withdrawal Agreement, entitled 'Pending cases before the Court of Justice of the European Union', provides in paragraphs 2 and 3:

'2. The Court of Justice of the European Union shall continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period.

3. For the purposes of this Chapter, proceedings shall be considered as having been brought before the Court of Justice of the European Union … at the moment at which the document initiating the proceedings has been registered by the registry of the Court of Justice …'

16 Article 89(1) of the Withdrawal Agreement states:

'Judgments and orders of the Court of Justice of the European Union handed down before the end of the transition period, as well as such judgments and orders handed down after the end of the transition period in proceedings referred to in Articles 86 and 87, shall have binding force in their entirety on and in the United Kingdom.'

17 In accordance with Article 126 of the Withdrawal Agreement, the transition period began on the date of entry into force of that agreement, namely 1 February 2020, and expired on 31 December 2020.

United Kingdom law

18 Directive 2004/38 was transposed into United Kingdom law by the Immigration (European Economic Area) Regulations 2006 ('the Immigration Regulations 2006'), which were subsequently consolidated by the Immigration (European Economic Area) Regulations 2016 ('the Immigration Regulations 2016').

19 Regulation 4(1) of the Immigration Regulations 2016 defines the different categories of Union citizens set out in Article 7(1)(a) to (c) of Directive 2004/38, namely, workers, self-employed persons, self-sufficient persons and students. Regulation 4(1)(c) thereof defines a 'self-sufficient person' as a person who has sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's period of residence and who has comprehensive sickness insurance cover in the United Kingdom.

20 Regulation 4(3) of the Immigration Regulations 2016 states, as regards family members of a self-sufficient person whose right of residence depends on that self-sufficient person's right of residence, that the requirement to have comprehensive sickness insurance cover in the United Kingdom is only satisfied if such cover extends to cover both that self-sufficient person and his or her relevant family members.

21 Regulation 6(1) of the Immigration Regulations 2016 defines the concept of 'qualified persons' for the purposes of those regulations. Under Regulation 6(1)(d) of those regulations, the concept of 'qualified person' includes self-sufficient persons within the meaning of Regulation 4(1)(c) thereof.

22 Under Regulation 14(1) of the Immigration Regulations 2016, a qualified person is entitled to reside in the United Kingdom for as long as that person remains a qualified person.

23 Under Regulation 15(1)(a) of the Immigration Regulations 2016, an EEA (European Economic Area) national who has resided in the United Kingdom for a continuous period of five years acquires the right of permanent residence there. Under Regulation 15(1)(b), the same applies to a family member of an EEA national where that family member is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with those regulations for a continuous period of five years.

24 Regulation 16 of the Immigration Regulations 2016, which corresponds to Regulation 15a of the Immigration Regulations 2006, lays down the conditions under which a person may be recognised as enjoying a derivative right to reside in the United Kingdom. Under Regulation 16(1) and (2) of the Immigration Regulations 2016, a person who is the primary carer of an EEA national residing in the United Kingdom has a derivative right to reside in that State when the EEA national in question is under the age of 18, resides in the United Kingdom as a self-sufficient person and would be unable to remain in the United Kingdom if the person left the United Kingdom for an indefinite period.

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

25 VI is a Pakistani national residing with her husband, who is also a Pakistani national, and their four children in Northern Ireland (United Kingdom). In 2004, their son, who has Irish nationality, was born there.

26 VI and her husband have sufficient resources to maintain themselves and the family. In particular, VI's husband worked and was subject to tax during all the periods at issue in the main proceedings. VI, who initially looked after their children, works and has been subject to tax since April 2016.

27 It is common ground between the parties to the main proceedings that, at least during the period from 17 August 2006 to 16 August 2014, VI and her family had comprehensive sickness insurance cover and that VI therefore enjoyed, pursuant to Regulation 15a(1) and (2) of the Immigration Regulations 2006, a derived right of residence as a person who is the primary carer for a child who is a 'self-sufficient' EEA national.

28 It is also common ground between those parties that, by virtue of his lawful residence in the United Kingdom for a continuous period of five years, VI's son acquired a right of permanent residence in the United Kingdom.

29 In contrast, the parties to the main proceedings disagree as to VI's right to receive, for the periods from 1 May 2006 to 20 August 2006 and from 18 August 2014 to 25 September 2016, first, the Child Tax Credit and, second, Child Benefit. The two actions relating to the disputes at issue in the main proceedings, which are pending before the referring court, have been joined by that court for the purposes of the present reference for a preliminary ruling on the ground that they share the same subject matter, namely VI's right of residence in the United Kingdom during the periods in question.

30 According to HMRC, no such right exists since VI was not covered by comprehensive sickness insurance during those periods. Consequently, she is not entitled to either the Child Tax Benefit or to Child Benefit. However, HMRC now concedes that the amount of any overpayment cannot be recovered from VI since VI neither misrepresented nor failed to disclose any material facts.

31 In those circumstances, the Social Security Appeal Tribunal (Northern Ireland) (United Kingdom) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is a child [EEA] permanent resident required to maintain comprehensive sickness insurance in order to maintain a right to reside, as s/he would as a self-sufficient person, pursuant to Regulation 4(1) of the [Immigration Regulations 2016]?

(2) Is the requirement, pursuant to Regulation 4(3)(b) of the [Immigration Regulations 2016] (that Comprehensive Sickness Insurance cover in the United Kingdom is only satisfied for a student or self-sufficient person, with regard to Regulation 16(2)(b)(ii) of the [Immigration Regulations 2016], if such cover extends to both that person and all their relevant family members), illegal under EU law in light of Article 7(1) of Directive 2004/38 and the jurisprudence of the Court of Justice in paragraph 70 [of the judgment of 23 February 2010, *Teixeira* (C-480/08, EU:C:2010:83)]?

(3) Following the decision in paragraph 53 of *Ahmad v. Secretary of State for the Home Department* [2014] EWCA Civ 988, are the Common Travel Area reciprocal arrangements in place regarding Health Insurance cover between the United Kingdom and the Republic of Ireland considered "reciprocal arrangements" and therefore constitute Comprehensive Sickness Insurance for the purposes of Regulation 4(1) of the [Immigration Regulations 2016]?'

The jurisdiction of the Court of Justice

32 According to settled case-law, it is for the Court to examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 45 and the case-law cited).

33 In that regard, it follows from Article 19(3)(b) TEU and the first paragraph of Article 267 TFEU that the Court has jurisdiction to give a preliminary ruling on the interpretation of EU law or on the validity and interpretation of acts of the EU institutions. The second paragraph of Article 267 states, in essence, that whenever a question that is capable of being the subject of a reference for a preliminary ruling is raised in a case pending before a court of a Member State, that court may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to rule on it.

34 In the present case, on 1 February 2020, the date on which the Withdrawal Agreement entered into force, the United Kingdom withdrew from the European Union, thus becoming a third State. It follows that the courts and tribunals of that State, as from that date, can no longer be regarded as courts and tribunals of a Member State.

35 That agreement provides, however, in Article 126, for a transition period between the date of its entry into force on 1 February 2020 and 31 December 2020. Article 127 of that agreement provides that, during that period, unless otherwise provided in that agreement, EU law is to be applicable in the United Kingdom and in its territory, produce the same legal effects as those which it produces within the Union and its Member States, and is to be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.

36 Article 86 of the Withdrawal Agreement also provides, in paragraph 2, that the Court is to continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period. It follows, moreover, from Article 86(3) of that agreement, that a request for a preliminary ruling is to be considered as having been made, within the meaning of paragraph 2, on the date on which the document initiating the proceedings was registered by the Court Registry.

37 The present request for a preliminary ruling was submitted to the Court of Justice by a United Kingdom court on 7 April 2020, that is to say, before the end of the transition period, in the context of the disputes at issue in the main proceedings concerning VI's right to reside in the United Kingdom during the periods from 1 May 2006 to 20 August 2006 and from 18 August 2014 to 25 September 2016 and to receive, in respect of those periods, the Child Tax Credit and Child Benefit.

38 It follows, first, that the situation at issue in the main proceedings concerns periods before the United Kingdom withdrew from the European Union and before the expiry of the transition period and therefore falls within the scope *ratione temporis* of EU law. Second, the Court has jurisdiction to give a preliminary ruling on the request from the referring court, pursuant to Article 86(2) of that agreement, in so far as that request seeks an interpretation of EU law.

Application for an expedited procedure

39 The referring court has requested the Court to apply the expedited procedure to the present case pursuant to Article 105 of the Rules of Procedure of the Court of Justice. Although that court has not itself stated reasons for that request, it is clear from the order for reference that it was submitted following an application to that effect by VI and that VI had justified the need to have recourse to that procedure by, first, the expiry, on 31 December 2020, of the transition period provided for by the Withdrawal Agreement, following which compliance with a judgment of the Court would be more difficult, secondly, the fact that HMRC was still seeking to recover sums which it claimed to have been unduly paid as Child Tax Credit, and thirdly, the fact that, since October 2016, VI has not been receiving the welfare benefits to which she claims to be entitled.

40 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure.

41 It must be borne in mind, in that regard, that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency (judgment of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 37 and the case-law cited).

42 In the present case, by decision of 20 July 2020, the President of the Court, after hearing the Judge-Rapporteur and the Advocate General, rejected the application for an expedited procedure to be applied to the present case.

43 As regards, first, the argument based on the expiry of the transition period provided for by the Withdrawal Agreement, it is apparent from Article 89(1) of that agreement, read in conjunction with Article 86(2) thereof, that the preliminary rulings which the Court of Justice hands down after the end of the transition period on the request of a United Kingdom court, submitted before the end of that period, have binding force in their entirety on and in the United Kingdom.

44 As regards, second, the argument that HMRC is still seeking recovery of sums which, in its view, were wrongly paid as Child Tax Credit, it is apparent from the findings of fact made by the referring court, which alone has competence in that regard, in its request for a preliminary ruling, summarised in paragraph 30 of the present judgment, that HMRC now acknowledges that the amount of any overpayment cannot be recovered from VI since she has neither misrepresented nor failed to disclose any material facts.

45 Third, as regards the fact that, since October 2016, VI did not receive the welfare benefits to which she claims to be entitled, it must be stated that, even if the judicial decisions in the disputes in the main proceedings, which relate to periods prior to that date, were to give rise to an obligation on HMRC to pay those benefits also in respect of periods subsequent to that date, it does not follow

from the documents submitted to the Court that failure to pay those benefits would expose VI and her family to a situation of material destitution capable of justifying recourse to the expedited procedure (see, to that effect, judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 44). Neither an individual's simple interest – regardless of how important and legitimate that interest may be – in having the scope of his or her rights under EU law determined as quickly as possible, nor the economically or socially sensitive nature of a case means, in themselves, that that case must be dealt with within a short time, within the meaning of Article 105(1) of the Rules of Procedure (see, to that effect, order of 26 November 2020, *DSK Bank and FrontEx International*, C-807/19, EU:C:2020:967, paragraph 38).

46 In those circumstances, it does not appear, in the light of the information provided to the Court, that the present case is of such an urgent nature that it would be justified to derogate, exceptionally, from the ordinary rules of procedure applicable to references for a preliminary ruling.

Consideration of the questions referred

Preliminary observations

47 It must be borne in mind that the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of rules of national law with EU law. However, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of EU law necessary to enable that court to determine whether those national rules are compatible with EU law (judgment of 18 November 2020, *Syndicat CFTC*, C-463/19, EU:C:2020:932, paragraph 29 and the case-law cited).

48 Furthermore, it is for the Court, in the context of that cooperation procedure, to provide the national court with an answer will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 61 and the case-law cited). 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 order for reference, the points of EU law which require interpretation in view of the subject matter of the dispute (judgment of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraph 34 and the case-law cited).

49 In the present case, it is apparent from the order for reference that it is common ground between the parties to the main proceedings that VI has sufficient resources to maintain herself and her son, a Union citizen born during the year 2004, and that, at least during the period from 17 August 2006 to 16 August 2014, they had comprehensive sickness insurance cover. It follows that VI's son and VI herself, as the parent who is the primary carer of that child, enjoyed, throughout that period, a right of residence in the United Kingdom under Article 21(1) TFEU and Article 7(1)(b) of Directive 2004/38 (see, by analogy, judgments of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraphs 42 to 47, and of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraphs 41 to 53).

50 VI's son, having thus resided legally in the United Kingdom for a continuous period of more than five years, acquired, by 17 August 2011 at the latest, a right of permanent residence in that State pursuant to Article 16(1) of Directive 2004/38.

51 The disputes in the main proceedings concern VI's entitlement to receive the Child Tax Credit and Child Benefit, first, for a period prior to 17 August 2006, during which her son did not yet have a right of permanent residence in the United Kingdom under Article 16(1) of Directive 2004/38 and, second, for a period after 16 August 2014, during which he did have such a right. According to HMRC, VI is not entitled to either the Child Tax Credit or Child Benefit for those periods on the ground that, during those periods, she was not covered by comprehensive sickness insurance and, consequently, did not have a derived right of residence in the United Kingdom.

52 By its questions, the referring court thus seeks to ascertain the extent to which the requirement to have comprehensive sickness insurance cover in the host Member State, laid down in Article 7(1)(b) of Directive 2004/38, was applicable to VI and her son during the same periods and, if necessary, whether the insurance cover which they had was sufficient to satisfy that requirement. The questions should therefore be reformulated accordingly.

The first question

53 By its first question, the referring court asks, in essence, whether Article 21 TFEU and Article 16(1) of Directive 2004/38 must be interpreted as meaning that a child, a Union citizen, who has acquired a right of permanent residence, and the parent who is the primary carer of that child are required to have comprehensive sickness insurance cover, within the meaning of Article 7(1)(b) of that directive, in order to retain their right of residence in the host State.

54 As regards that child, who is a Union citizen, it should be noted that Article 16(1) of Directive 2004/38 expressly provides that the right of permanent residence, which Union citizens acquire after residing legally for a continuous period of five years in the host Member State, 'shall not be subject to the conditions provided for in Chapter III'. That right is therefore not subject, in particular, to the conditions, laid down in Article 7(1)(b) of that directive, that they have sufficient resources and comprehensive sickness insurance cover for themselves and their family members.

55 Recital 18 of that directive states, in that regard that, 'in order to be a genuine vehicle for integration into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once obtained, should not be subject to any conditions'.

56 As regards the parent who is a third-country national and who is the primary carer of that child, it should be noted that Article 16(2) of Directive 2004/38, which provides that paragraph 1 of that article is also to apply to family members who are not nationals of a Member State and who have legally resided with the Union citizen in the host Member State for a continuous period of five years, does not apply to the situation of such a parent.

57 As is apparent from Article 2(2) of Directive 2004/38, the concept of 'family member', within the meaning of that directive, is limited, as regards the relatives in the ascending line of a Union citizen, to 'dependent direct relatives in the ascending line'. Consequently, where a minor citizen of the Union is dependent on his or her parent, who is a national of a third country, the latter cannot rely on being a 'dependent' direct relative in the ascending line, within the meaning of that

directive, with a view to having the benefit of a right of residence in the host Member State (see, to that effect, judgment of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraph 50 and the case-law cited).

58 That said, it is settled case-law that the right of permanent residence in the host Member State, conferred by EU law on a minor national of another Member State, must, for the purposes of ensuring the effectiveness of that right of residence, be considered as necessarily implying, under Article 21 TFEU, a right for the parent who is the primary carer of that minor Union citizen to reside with him or her in the host Member State, regardless of the nationality of that parent (see, to that effect, judgments of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraphs 45 and 46, and of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraphs 51 and 52).

59 It follows that the inapplicability of the conditions set out, inter alia, in Article 7(1)(b) of Directive 2004/38, following the acquisition by that minor of a right of permanent residence under Article 16(1) of that directive, extends, pursuant to Article 21 TFEU, to that parent.

60 Having regard to the foregoing considerations, the answer to the first question is that Article 21 TFEU and Article 16(1) of Directive 2004/38 must be interpreted as meaning that neither a child, a Union citizen, who has acquired a right of permanent residence, nor the parent who is the primary carer of that child is required to have comprehensive sickness insurance cover, within the meaning of Article 7(1)(b) of that directive, in order to retain their right of residence in the host State.

The second question

61 By its second question, the referring court asks, in essence, whether Article 21 TFEU and Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that, as regards periods before a child, a Union citizen, has acquired a right of permanent residence in the host State, both that child, where a right of residence is claimed for him or her on the basis of that Article 7(1)(b), and the parent who is actually caring for him or her must have comprehensive sickness insurance cover within the meaning of that directive.

62 Under Article 7(1)(b) of Directive 2004/38, all Union citizens are to have the right of residence on the territory of another Member State for a period of longer than three months but less than five years 'if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State'.

63 As the Advocate General observed in points 48 and 49 of his Opinion, although the wording of that provision contains, in its English version, a certain ambiguity, it is nevertheless clear from other language versions of that provision, such as those in German, Spanish, French and Italian, and from the general scheme and purpose of Directive 2004/38 that, pursuant to the same provision, not only the Union citizen but also the members of his or her family who reside with him or her in the host State must have comprehensive sickness insurance cover.

64 In that regard, it is important to emphasise, in a similar way to what has been stated in paragraph 58 of the present judgment, that although, admittedly, the parent who is the primary carer of a minor Union citizen is not one of his or her family members within the meaning of

Directive 2004/38, the right of residence of more than three months and less than five years conferred by that directive on that minor Union citizen nevertheless extends, in order to ensure the effectiveness of that right of residence, to that parent by virtue of Article 21 TFEU.

65 Therefore, in order to determine whether that parent, a national of a third State, benefits from such a right of residence due to the situation of his or her child, a Union citizen, it is necessary to examine whether that child fulfils the conditions set out in Article 7(1)(b) of Directive 2004/38. For the purposes of that examination, those conditions must be deemed to apply *mutatis mutandis* to that parent.

66 The Court has already had occasion to find that it follows from Article 7(1)(b) of Directive 2004/38, read in conjunction with recital 10 and Article 14(2) thereof, that, throughout the period of residence in the host Member State of more than three months and less than five years, economically inactive Union citizens must, inter alia, have comprehensive sickness insurance cover for themselves and their family members so as not to become an unreasonable burden on the public finances of that Member State (judgment of 15 July 2021, *A (Public health care)*, C-535/19, EU:C:2021:595, paragraphs 53 to 55).

67 With regard to the situation of a child, a Union citizen, who resides in the host State with a parent who is his or her primary carer, this requirement is satisfied both where this child has comprehensive sickness insurance which covers his or her parent, and in the inverse case where this parent has such insurance covering the child (see, by analogy, judgment of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraphs 29 to 33).

68 In the present case, it is apparent from the documents before the Court that VI and her son were affiliated during the period in question, namely from 1 May 2006 to 20 August 2006, to the United Kingdom's public sickness insurance system offered free of charge by the National Health Service.

69 In that regard, it must be recalled that, although the host Member State may, subject to compliance with the principle of proportionality, make affiliation to its public sickness insurance system of an economically inactive Union citizen, residing in its territory on the basis of Article 7(1)(b) of Directive 2004/38, subject to conditions intended to ensure that that citizen does not become an unreasonable burden on the public finances of that Member State, such as the conclusion or maintaining, by that citizen, of comprehensive private sickness insurance enabling the reimbursement to that Member State of the health expenses it has incurred for that citizen's benefit, or the payment, by that citizen, of a contribution to that Member State's public sickness insurance system (judgment of 15 July 2021, *A (Public health care)*, C-535/19, EU:C:2021:595, paragraph 59), the fact remains that, once a Union citizen is affiliated to such a public sickness insurance system in the host Member State, he or she has comprehensive sickness insurance within the meaning of Article 7(1)(b).

70 Furthermore, in a situation, such as that in the main proceedings, in which the economically inactive Union citizen at issue is a child, one of whose parents, a third-country national, has worked and was subject to tax in the host State during the period at issue, it would be disproportionate to deny that child and the parent who is his or her primary carer a right of residence, under Article 7(1)(b) of Directive 2004/38, on the sole ground that, during that period, they were affiliated free of charge to the public sickness insurance system of that State. It cannot be considered that that affiliation free of charge constitutes, in such circumstances, an unreasonable burden on the public finances of that State.

71 Lastly, in so far as the referring court refers, in its second question, to paragraph 70 of the judgment of 23 February 2010, *Teixeira* (C-480/08, EU:C:2010:83), it must be held that that judgment is not relevant here. It is true that the Court has held in that judgment that the right of residence in the host Member State enjoyed by the parent who is the primary carer of a child exercising the right to pursue education in accordance with Article 12 of Regulation No 1612/68 is not subject to the condition that that parent must have sufficient resources not to become a burden on the social assistance system of that Member State during his or her period of residence and must have comprehensive sickness insurance cover there. However, Article 12 of Regulation No 1612/68, like Article 10 of Regulation No 492/2011, which replaced it, confers rights only on the children of the family of a national of a Member State who is or has been employed in the territory of the host Member State. VI's husband and the father of the child concerned is a third-country national.

72 In the light of the foregoing considerations, the answer to the second question is that Article 21 TFEU and Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that, as regards periods before a child, a Union citizen, has acquired a right of permanent residence in the host Member State, both that child, where a right of residence is claimed for him or her on the basis of that Article 7(1)(b), and the parent who is the primary carer of that child must have comprehensive sickness insurance cover within the meaning of that directive.

The third question

73 By its third question, the referring court asks whether, following a judgment delivered in 2014 by the Court of Appeal (England & Wales) (Civil Division) (United Kingdom), the reciprocal arrangements in force relating to the common travel area applicable to health insurance between the United Kingdom and the Republic of Ireland must be regarded as 'reciprocal arrangements' and, therefore, as comprehensive sickness insurance cover for the purposes of Regulation 4(1) of the Immigration Regulations 2016.

74 Although, in the light of the preliminary considerations set out in paragraphs 47 to 52 of the present judgment, it appears possible to reformulate that question to the effect that, by that question, the referring court asks the Court, in essence, whether Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that reciprocal arrangements, such as those in force relating to the common travel area applicable to health insurance between the United Kingdom and the Republic of Ireland, are capable of satisfying the requirement to have comprehensive sickness insurance cover, within the meaning of that provision, it must be noted, however, that the referring court provides no information as to the content of those arrangements and their relevance to the case in the main proceedings.

75 Following settled case-law, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for that court to define the factual and legal context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national court is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (judgment of 25 March 2021, *Obala i lučice*, C-307/19, EU:C:2021:236, paragraph 49 and the case-law cited).

76 Those requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure, which the referring court is required to observe in the context of the cooperation instituted by Article 267 TFEU (judgment of 25 March 2021, *Obala i*

lučice, C-307/19, EU:C:2021:236, paragraph 50 and the case-law cited). Those requirements are also stated in the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1).

77 Since, in the present case, the request for a preliminary ruling does not satisfy those requirements as regards the third question, it is inadmissible.

Costs

78 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 (Fifth Chamber) hereby rules:

1. **Article 21 TFEU and Article 16(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 must be interpreted as meaning that neither a child, a Union citizen, who has acquired a right of permanent residence, nor the parent who is the primary carer of that child is required to have comprehensive sickness insurance cover, within the meaning of Article 7(1)(b) of that directive, in order to retain their right of residence in the host State.**

2. **Article 21 TFEU and Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that, as regards periods before a child, a Union citizen, has acquired a right of permanent residence in the host State, both that child, where a right of residence is claimed for him or her on the basis of that Article 7(1)(b), and the parent who is the primary carer of that child must have comprehensive sickness insurance cover within the meaning of that directive.**

Regan Lycourgos Jarukaitis

Ilešič Kumin

Delivered in open court in Luxembourg on 10 March 2022.

A. Calot Escobar K. Lenaerts
Registrar President