



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 September 2022\*

[Text rectified by order of 28 October 2022]

(Reference for a preliminary ruling – Directive 2004/38/EC – Right of Union citizens and their family members to move and reside freely within the territory of the Member States – Article 3(2), first subparagraph, point (a) – Concept of ‘other family members who are members of the household of the Union citizen having the primary right of residence’ – Assessment criteria)

In Case C-22/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 13 January 2021, received at the Court on 14 January 2021, in the proceedings

**SRS,**

**AA**

v

**Minister for Justice and Equality,**

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Jääskinen, M. Safjan, N. Piçarra (Rapporteur) and M. Gavalec, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– SRS and AA, by K. Berkeley, Solicitor, M. Flynn, JC, and C. O’Dwyer, Senior Counsel,

\* Language of the case: English.

- [As rectified by order of 28 October 2022] the Minister for Justice and Equality, by M. Browne, A. Joyce and J. Quaney, acting as Agents, and by D. Brett, D. Conlan Smyth, Senior Counsel, and T. O’Connor, Barrister-at-Law,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Danish Government, by J. Nymann-Lindegren and M. Søndahl Wolff, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,
- the Kingdom of Norway, by J.T. Kaasin and H. Ruus, acting as Agents,
- the European Commission, by E. Montaguti and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2022,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).
- 2 The request has been made in proceedings between SRS and AA, on the one hand, and the Minister for Justice and Equality (Ireland), on the other, concerning the legality of a decision refusing a residence permit.

### **Legal context**

#### ***European Union law***

- 3 Recital 6 of Directive 2004/38 states as follows:

‘In order to maintain the unity of the family in a broader sense and without prejudice to the prohibition of discrimination on grounds of nationality, the situation of those persons who are not included in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, should be examined by the host Member State on the basis of its own national legislation, in order to decide whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.’

4 Article 2(2) of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive:

...

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)’.

5 Article 3 of that directive, entitled ‘Beneficiaries’, provides:

‘1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

- (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;
- (b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.’

### *Irish law*

6 Directive 2004/38 was transposed into Irish law by the European Communities (Free Movement of Persons) (No 2) Regulations 2006 (‘the 2006 Regulations’).

7 Article 2(1) of those regulations, which transposes the first subparagraph of Article 3(2) of Directive 2004/38 into Irish law, is worded as follows:

‘...

“permitted family member”, in relation to a Union citizen, means any family member, irrespective of his or her nationality, who is not a qualifying family member of the Union citizen, and who, in his or her country of origin, habitual residence or previous residence -

- (a) is a dependant of the Union citizen,
- (b) is a member of the household of the Union citizen,
- (c) on the basis of serious health grounds strictly requires the personal care of the Union citizen,  
or
- (d) is the partner with whom the Union citizen has a durable relationship, duly attested.’

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

- 8 SRS and AA, born in Pakistan in 1978 and 1986 respectively, are first cousins. SRS moved to the United Kingdom with his family in 1997 and acquired British nationality in 2013. AA travelled to the United Kingdom in 2010 in order to pursue his university studies, which he had begun in Pakistan. He held, on that basis, a student visa for a period of four years, which did not allow him to work, and he moved into the house in which SRS lived.
- 9 SRS and AA thus lived together, with SRS’s parents amongst others, until SRS moved to Ireland in January 2015. AA, whose student visa expired on 28 December 2014, joined SRS in Ireland, on 5 March 2015, without a visa. Both have lived in the same residence since the latter date.
- 10 On 24 June 2015, AA applied to the Minister for Justice and Equality for a residence permit, claiming, first, that he was financially dependent on SRS and, secondly, that he was both a family member and a member of the household of SRS. That application was rejected by decision of 21 December 2015 on the ground, inter alia, that only the period following SRS’s naturalisation, in February 2013, could be taken into consideration, with the result that SRS and AA had to be regarded as having resided together for a period of less than two years.
- 11 In January 2016, after furnishing other documentation intended to prove that he was dependent on SRS between July 2010 and January 2015, AA requested a review of that decision. On 15 August 2016, the Minister for Justice and Equality confirmed that decision on the ground that, although SRS and AA had resided at the same address, it had not, however, been established that SRS ‘was in fact the head of that household in the United Kingdom’.
- 12 SRS and AA then lodged an application for judicial review of that decision of 15 August 2016 before the High Court (Ireland). They submitted that the ‘head of the household’ criterion was not clear and that they had no indication as to how to comply with it. By judgment of 25 July 2018, that court dismissed that application, holding that, in order to be classified as an ‘other family member who is a member of the household of the Union citizen’, for the purposes of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38, it had to be shown that that citizen was the ‘head of the household’ in his or her State of origin.
- 13 SRS and AA appealed against that judgment before the Court of Appeal (Ireland), arguing, inter alia, that the High Court had adopted an overly restrictive interpretation of the concept of an ‘other family member who is a member of the household of the Union citizen’ and that it had not

taken account of other language versions of Directive 2004/38. By decision of 19 December 2019, the Court of Appeal dismissed that appeal. It held that persons living under the same roof do not necessarily form part of the same household and that, in order to be regarded as family members who are part of the household of a Union citizen, those persons had to be an integral part of the family unit and remain so for the foreseeable future, living with the Union citizen not merely for reasons of convenience but also for reasons of emotional connection.

- 14 SRS and AA were granted leave to appeal to the Supreme Court (Ireland), the referring court. On 20 July 2020, that court limited that appeal to the interpretation of the concept of an ‘other family member who is a member of the household of the Union citizen’ for the purposes of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38.
- 15 While noting certain differences between the language versions of Directive 2004/38, the referring court observes that, in order to understand that concept, the expression ‘head of the household’, while old-fashioned, may be useful. It also proposes a set of criteria in order to arrive at a uniform interpretation of that concept, including the time spent in the household of the EU citizen and the purpose of that cohabitation. It adds that, in view of the objective pursued by that directive, namely facilitating the movement of Union citizens, it is also necessary to determine whether the Union citizen would be deterred from moving to another Member State if the other family member concerned, within the meaning of point (a) of the first subparagraph of Article 3(2) of that directive, were unable to accompany him.
- 16 In those circumstances, the Supreme Court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
  - ‘(1) Can the term member of the household of an EU citizen, as used in [point (a) of the first subparagraph of Article 3] of Directive [2004/38], be defined so as to be of universal application throughout the [European Union] and if so what is that definition?
  - (2) If that term cannot be defined, by what criteria are judges to look at evidence so that national courts may decide according to a settled list of factors who is or who is not a member of the household of an EU citizen for the purpose of freedom of movement?’

### **Consideration of the questions referred**

- 17 By its questions, which it is appropriate to examine together, the referring court asks the Court, in essence, to interpret the concept of ‘any other family members who are members of the household of the Union citizen having the primary right of residence’, referred to in point (a) of the first subparagraph of Article 3(2) of Directive 2004/38, so as to clarify the criteria which are to be taken into consideration in that respect.
- 18 As a preliminary point, it should be noted that, although the first subparagraph of Article 3(2) of Directive 2004/38 refers to national legislation, that reference, as the European Commission points out in its written observations, concerns not the definition of the persons mentioned in that provision but the conditions under which the host Member State must facilitate the entry and residence of those persons.

- 19 Since that provision makes no express reference to the law of the Member States for the purpose of defining the concept of ‘any other family members who are members of the household of the Union citizen having the primary right of residence’, it follows from both the need for a uniform application of European Union law and the principle of equality that that provision must be given an independent and uniform interpretation throughout the European Union, taking into consideration not only the usual meaning of its terms, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgments of 21 December 2011, *Ziolkowski and Szeja*, C-424/10 and C-425/10, EU:C:2011:866, paragraph 32; of 26 March 2019, *SM (Child placed under Algerian kafala)*, C-129/18, EU:C:2019:248, paragraph 50; and of 24 February 2022, *A and Others (‘Unit-linked’ assurance contracts)*, C-143/20 and C-213/20, EU:C:2022:118, paragraph 68).
- 20 As regards the literal interpretation of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38, it should be noted at the outset that, according to settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions. The need for uniform interpretation and application of each provision of EU law precludes one linguistic version of the text being considered in isolation, but requires that the measure be interpreted by reference to the general scheme and purpose of the rules of which it forms part (see, to that effect, judgments of 27 October 1977, *Bouchereau*, 30/77, EU:C:1977:172, paragraph 14, and of 25 February 2021, *Bartosch Airport Supply Services*, C-772/19, EU:C:2021:141, paragraph 26).
- 21 In the present case, although the terms used in certain language versions of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38, like the Spanish version (‘viva con’), the Italian version (‘convive’), or the Dutch version (‘inwonen’), may be interpreted as referring to mere cohabitation under the same roof, the terms used in other language versions of that provision denote domestic life and all the activities and affairs linked to family life within the same household, which implies more than the mere sharing of accommodation or a mere temporary cohabitation for reasons of pure convenience. That is true, in particular, of the Czech (‘domácnost’), German (‘häusliche Gemeinschaft’), Estonian (‘leibkond’), English (‘household’) or French (‘ménage’), Hungarian (‘háztartás’), Portuguese (‘comunhão de habitação’), Slovak (‘domácnosť’) and Finnish (‘massasa taloude’) versions of that provision.
- 22 In addition, it should be noted that nothing in the wording of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38 permits the inference that, in order to interpret that provision, it is necessary to have recourse to the concept of ‘head of the household’. As the Advocate General stated in point 34 of his Opinion, that would amount to imposing, in practice, an additional criterion not provided for in the wording of that provision.
- 23 A literal interpretation of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38, according to which, in order for the ‘other family members’ to fall within the scope of that provision, they must have ties to the Union citizen concerned involving more than mere cohabitation for reasons of pure convenience, is supported by the context of that provision. The other two situations mentioned in that provision, read in the light of recital 6 of that directive, refer to a situation of dependence of the ‘other family members’ on the Union citizen. The first situation, in which those other family members are dependants of the Union citizen, concerns a situation of financial dependence. The second situation, in which serious health grounds strictly require the personal care of the ‘other family member’ by the Union citizen, expressly refers to a situation of physical dependence. In that context, the situation at issue in the main proceedings –

in which the other family member is a member of the household of the Union citizen – must be understood as also covering a situation of dependence, based this time on the existence of close and stable personal ties between those two persons.

- 24 That interpretation is, moreover, supported by the objective pursued by point (a) of the first subparagraph of Article 3(2) of Directive 2004/38, read in the light of recital 6 thereof, which states that one of the aims of that directive is ‘to maintain the unity of the family in a broader sense’, by facilitating the entry and residence of persons who are not included in one of the categories of ‘family members’ of a Union citizen set out in Article 2(2) of that directive but nevertheless maintain close and stable family ties with a Union citizen on account of specific factual circumstances (see, to that effect, judgments of 5 September 2012, *Rahman and Others*, C-83/11, EU:C:2012:519, paragraph 32, and of 26 March 2019, *SM (Child placed under Algerian kafala)*, C-129/18, EU:C:2019:248, paragraph 60).
- 25 Unlike the family members of the Union citizen, as defined in Article 2(2) of Directive 2004/38, the ‘other family members’ of that citizen, within the meaning of point (a) of the first subparagraph of Article 3(2) of that directive, do not have a right of entry and residence in the host Member State of that citizen, but rather the possibility of being granted such a right, as stated in recital 6 of that directive, ‘taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen’. To that end, those ‘other family members’ enjoy procedural guarantees, under the second paragraph of Article 3(2) of that directive, namely to obtain a decision on their application for entry and residence, which must be based on an extensive examination of their personal situation and take account of all the particular circumstances of that situation, and which, in the event of refusal, must be justified by reasons (see, to that effect, judgments of 5 September 2012, *Rahman and Others*, C-83/11, EU:C:2012:519, paragraphs 19 to 22, and of 26 March 2019, *SM (Child placed under Algerian kafala)*, C-129/18, EU:C:2019:248, paragraph 62).
- 26 In those circumstances, in order for an ‘other family member’ to be regarded as a member of the household – within the meaning of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38 – of the Union citizen having a right of residence in the host Member State, he or she must provide proof of close and stable ties with that citizen, demonstrating a situation of genuine dependence between those two persons and a shared domestic life which has not been brought about with the sole objective of obtaining entry into and residence in the host Member State (see, to that effect, judgment of 5 September 2012, *Rahman and Others*, C-83/11, EU:C:2012:519, paragraph 38).
- 27 In order to determine whether such ties exists, the degree of kinship between the Union citizen and the other family member concerned is certainly a factor to be taken into consideration. Nevertheless, as the Advocate General observed, in essence, in points 40 and 41 of his Opinion, account should also be taken, depending on the specific circumstances of each case, of the closeness of the family relationship in question, reciprocity and the strength of the ties between those two persons. Those ties must be such that, if the other family member concerned were prevented from being a member of the household of the Union citizen in the host Member State, at least one of those two persons would be affected.
- 28 However, it cannot be required that those ties be such that the Union citizen would refrain from exercising his freedom of movement if that other member of his family could not accompany or join him in the host Member State. Such a requirement would amount to conflating the ‘other

family member' concerned, within the meaning of point (a) of the first subparagraph of Article 3(2) of Directive 2004/38, with the family members expressly referred to in Article 2(2) of that directive.

- 29 The duration of the domestic life shared by the Union citizen and the other family member concerned is also an important factor to be taken into consideration in assessing whether there are stable personal ties between them. It must be possible to determine that duration irrespective of the date on which Union citizenship was acquired. It follows from point (a) of the first subparagraph of Article 3(2) of Directive 2004/38, interpreted in the light of recital 6 thereof, that, in order to assess the stability of the personal ties linking those two individuals, it is necessary to take into account not only the period subsequent to the acquisition of Union citizenship, but also the period prior to this.
- 30 Consequently, the answer to the questions referred is that point (a) of the first subparagraph of Article 3(2) of Directive 2004/38 must be interpreted as meaning that the concept of 'any other family members who are members of the household of the Union citizen having the primary right of residence', mentioned in that provision, refers to persons who have a relationship of dependence with that citizen, based on close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience.

### **Costs**

- 31 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 (Third Chamber) hereby rules:

**Point (a) of the first subparagraph of Article 3(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC,**

**must be interpreted as meaning that the concept of ‘any other family members who are members of the household of the Union citizen having the primary right of residence’, mentioned in that provision, refers to persons who have a relationship of dependence with that citizen, based on close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience.**

Jürimäe

Jääskinen

Safjan

Piçarra

Gavalec

Delivered in open court in Luxembourg on 15 September 2022.

A. Calot Escobar  
Registrar

K. Jürimäe  
President of the Third Chamber