Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

30 June 2016*

(Reference for a preliminary ruling — Articles 20 and 21 TFEU — Directive 2004/38/EC — Article 13(2)(c) — Regulation (EEC) No 1612/68 — Article 12 — Right of residence of family members of a Union citizen — Marriage of a Union citizen and a third country national — Domestic violence — Divorce after the departure of the Union citizen — Retention of right of residence of a third country national with custody of children who are Union citizens)

In Case C-115/15,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Court of Appeal (England & Wales) (Civil Division), made by decision of 25 February 2015, received at the Court on 6 March 2015, in the proceedings

Secretary of State for the Home Department

v

NA,

intervening party:

Aire Centre,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, A. Arabadjiev, J.-C. Bonichot, C.G. Fernlund, and S. Rodin, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 18 February 2016,

after considering the observations submitted on behalf of:

— NA, by A. Gonzalez, Solicitor, B. Asanovic, Barrister, and T. de la Mare QC,

— Aire Centre, by T. Buley, Barrister and R. Drabble QC, instructed by L. Barratt, Solicitor,

— the United Kingdom Government, by V. Kaye and M. Holt, acting as Agents, and by B. Kennelly and B. Lask, Barristers,

* Language of the case: English.

— the Danish Government, by C. Thorning and M.S. Wolff, acting as Agents,

— the Netherlands Government, by M. Bulterman and C. Schillemans, acting as Agents,

— the Polish Government, by B. Majczyna, acting as Agent,

— the European Commission, by M. Kellerbauer, M. Wilderspin, E. Montaguti and C. Tufvesson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 April 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 20 and 21 TFEU, Article 13(2)(c) 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 corrigenda : OJ 2004 L 229, p. 35; OJ 2005 L 30, p. 27, and OJ 2005 L 197, p. 34), and of Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ 1968 L 257, p. 2).

2 The request has been made in proceedings between the Secretary of State for the Home Department ('the Secretary of State') and NA, a Pakistan national, concerning NA's right of residence in the United Kingdom.

Legal context

European Union law

Directive 2004/38

3 Recital 15 in the preamble of Directive 2004/38 states:

'Family members should be legally safeguarded in the event of the death of the Union citizen, divorce, annulment of marriage or termination of a registered partnership. With due regard for family life and human dignity, and in certain conditions to guard against abuse, measures should therefore be taken to ensure that in such circumstances family members already residing within the territory of the host Member State retain their right of residence exclusively on a personal basis.'

4 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;

…

3) “host Member State” means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.’

5 Article 3(1) of that directive, that article being headed ‘Beneficiaries’, provides:

‘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.’

6 Article 7(1) and (2) of that directive, that article being headed ‘Right of residence for more than three months’, is worded as follows:

‘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).’

7 Article 12 of the directive, headed ‘Retention of the right of residence by family members in the event of death or departure of the Union citizen’, provides:

‘1. Without prejudice to the second subparagraph, the Union citizen’s death or departure from the host Member State shall not affect the right of residence of his/her family members who are nationals of a Member State.

Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).

2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.

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. "Sufficient resources" shall be as defined in Article 8(4).

Such family members shall retain their right of residence exclusively on a personal basis.

3. The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.'

8 Article 13(2) of Directive 2004/38, that article being headed 'Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership', provides:

'Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2 shall not entail loss of the right of residence of a Union's citizen's family members who are not nationals of a Member State where:

(a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 2(b) of Article 2, the marriage or registered partnership has lasted at least three years, including one year in the host Member State; or

(b) by agreement between the spouses or the partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children; or

(c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or

(d) by agreement between the spouses or partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.

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. "Sufficient resources" shall be as defined in Article 8(4).

Such family members shall retain their right of residence exclusively on a personal basis.'

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

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

…’

Regulation No 1612/68

10 The first paragraph of Article 12 of Regulation (EEC) No 1612/68 provides:

‘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.’

National law

11 It is stated in the order for reference that Article 13(2) of Directive 2004/38 has been transposed into national law by Regulation 10 of the Immigration (European Economic Area) Regulations 2006 (‘the 2006 Regulations’).

12 In particular, under Regulation 10(5) of the 2006 Regulations, if a person’s right of residence is to be retained in the event of divorce, that person must satisfy a number of conditions, including the condition that he or she ceases to be a family member of either a qualified person or of a national of the European Economic Area (EEA) with a permanent right of residence, on the date of divorce.

13 Under the 2006 Regulations, ‘qualified person’ means an EEA national who is in the United Kingdom as a jobseeker, worker, self-employed, self-sufficient person or student.

14 It is also stated in the order for reference that, under national law, the derived right of residence of a parent of a child falling within Article 12 of Regulation No 1612/68 is conferred by Regulation 15A of the 2006 Regulations, which in essence provides:

‘(1) A person (“P”) who is not an exempt person and who satisfies the criteria in paragraph (2), (3) (4), (4A) or (5) of this regulation is entitled to reside in the United Kingdom for as long as P satisfies the relevant criteria.

…

(3) P satisfies the criteria in this paragraph if —

(a) P is the child of an EEA national (“the EEA national parent”);

(b) P resided in the United Kingdom at a time when the EEA national parent was residing in the United Kingdom as a worker; and

(c) P is in education in the United Kingdom and was in education there at a time when the EEA national parent was in the United Kingdom.

(4) P satisfies the criteria in this paragraph if —

(a) P is the primary carer of a person meeting the criteria in paragraph (3) (“the relevant person”); and

(b) the relevant person would be unable to continue to be educated in the United Kingdom if P were required to leave.

…'

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

15 NA is a national of Pakistan who in September 2003 married KA, a German national, and the couple moved, in March 2004, to the United Kingdom.

16 The marital relationship deteriorated subsequently. NA was the victim of domestic violence on a number of occasions.

17 In October 2006 KA left the matrimonial home and in December 2006 he left the United Kingdom.

18 While resident in the United Kingdom, KA was a worker or self-employed.

19 The couple have two daughters, MA and IA. They were born in the United Kingdom, on 14 November 2005 and 3 February 2007 respectively, and have German nationality.

20 KA purported to divorce NA by a *talaq* issued in Karachi (Pakistan) on 13 March 2007. In September 2008 NA began divorce proceedings in the United Kingdom. Divorce became final on 4 August 2009. NA was granted sole custody of the two children.

21 MA and IA have attended schools in United Kingdom since January 2009 and September 2010 respectively.

22 By a decision adopted as part of the examination of an application made by NA for a right of permanent residence in the United Kingdom, the Secretary of State, who is responsible for matters of residence, decided that NA did not have a right of residence in the United Kingdom.

23 An action brought by NA against that decision was dismissed.

24 NA brought an appeal before the Upper Tribunal (Immigration and Asylum Chamber), which examined the three legal bases relied on by NA in support of her application for a right of residence in the United Kingdom.

25 First, that court held that NA could not rely on the retention of a right of residence in the United Kingdom under Article 13(2) of Directive 2004/38, for the reason that, on the date of the divorce, KA was no longer exercising the rights he derived from the Treaties in the United Kingdom, that condition stemming from that provision and from the judgment of 13 February 1985, *Diatta* (267/83, EU:C:1985:67).

26 Since NA considered that there is no provision that subjects the right to rely on the retention of her right of residence under Article 13(2) of Directive 2004/38 to such a condition, she brought an appeal, on that point, against that decision, before the referring court.

27 Second, the Upper Tribunal (Immigration and Asylum Chamber) held that NA nonetheless had a right of residence in the United Kingdom under EU law, under (i) Article 20 TFEU, as interpreted by the Court in the judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124), and (ii) Article 12 of Regulation No 1612/68.

28 The Secretary of State brought an appeal against the judgment of the Upper Tribunal (Immigration and Asylum Chamber) on that point before the referring court. While the Secretary of State accepts the existence of the rights derived by MA and IA from Articles 20 and 21 TFEU as Union citizens, she relies on the judgment of 10 October 2013, *Alokpa and Moudoulou* (C-86/12, EU:C:2013:645), to support her position that those rights would be infringed only if MA and IA were 'obliged in practice to leave the territory of the European Union altogether', which does not apply in this case, since those children have the right to reside in the Member State of which they are nationals, namely the Federal Republic of Germany. As regards the right of residence based on Article 12 of Regulation No 1612/68, in the opinion of the Secretary of State, that provision requires the parent who is a Union citizen to be in the host Member State on the date on which the child began his or her schooling, which again does not apply in this case.

29 Third and last, the Upper Tribunal (Immigration and Asylum Chamber) held, first, that if NA were refused a right of residence in the United Kingdom, that would compel her children, MA and IA, to leave the United Kingdom with their mother, since she has been granted sole custody of the children and, second, that an order to remove those children would be in breach of their rights under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and therefore upheld the action brought by NA under that provision. The Secretary of State did not bring an appeal against that part of the judgment.

30 In those circumstances, the Court of Appeal of England and Wales (Civil Division) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must a third country national ex-spouse of a Union citizen be able to show that their former spouse was exercising Treaty rights in the host Member State at the time of their divorce in order to retain a right of residence under Article 13(2) of Directive 2004/38?

(2) Does an EU citizen have an EU law right to reside in a host Member State under Articles 20 and 21 TFEU in circumstances where the only State within the EU in which the citizen is entitled to reside is his State of nationality, but there is a finding of fact by a competent tribunal that the removal of the citizen from the host Member State to his State of nationality would breach his rights under Article 8 of the [Convention for the Protection of Human Rights and Fundamental Freedoms] or Article 7 of the Charter of Fundamental Rights of the EU?

(3) If the EU citizen in (2) (above) is a child, does the parent having sole care of that child have a derived right of residence in the host Member State if the child would have to accompany the parent on removal of the parent from the host Member State?

(4) Does a child have a right to reside in the host Member State pursuant to Article 12 of Regulation No 1612/68 (now Article 10 of Regulation No 492/2011/EU) if the child's Union citizen parent, who has been employed in the host Member State, has ceased to reside in the host Member State before the child enters education in that State?'

Consideration of the questions referred for a preliminary ruling

The first question

31 By its first question, the referring court seeks, in essence, to ascertain whether Article 13(2)(c) of Directive 2004/38 is to be interpreted as meaning that a third-country national, who is divorced from a Union citizen at whose hands she has been the victim of domestic violence during the marriage, is entitled to retain her right of residence in the host Member State, on the basis of that provision, where the divorce post-dates the departure of the Union citizen spouse from that Member State.

32 Under Article 13(2)(c) of Directive 2004/38, divorce should not entail that a Union citizen's family members who are not nationals of a Member State should lose the right of residence where 'this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting'.

33 The Court must examine what conditions are applicable to that provision and, in particular, whether, in a situation where, as in the main proceedings, a third-country national has been the victim, during her marriage, of domestic violence perpetrated by a Union citizen from whom she is divorced, that Union citizen must reside in the host Member State, in accordance with Article 7(1) of Directive 2004/38, until the date of the divorce, if the third-country national is to be entitled to rely on Article 13(2)(c) of that directive.

34 In that regard, with respect to Article 13(2)(a) of Directive 2004/38, the Court has previously held that, where the Union citizen spouse leaves the host Member State, in order to settle in another Member State or in a third State, before the commencement of the divorce proceedings, the third-country national's derived right of residence, on the basis of Article 7(2) of Directive 2004/38, comes to an end with the departure of the Union citizen spouse and can, therefore, no longer be retained on the basis of Article 13(2)(a) of that directive (see, to that effect, judgment of 16 July 2015, *Singh and Others*, C-218/14, EU:C:2015:476, paragraph 62).

35 In such circumstances, the departure of the spouse who is a Union citizen has already brought about the loss of the right of residence of the spouse who is a third-country national and who remains in the host Member State. A subsequent petition for divorce cannot have the effect of reviving that right, since Article 13 of Directive 2004/38 mentions only the 'retention' of an existing right of residence (see judgment of 16 July 2015, *Singh and Others*, C-218/14, EU:C:2015:476, paragraph 67).

36 In that context, the Court held that the Union citizen who is the spouse of a third-country national must reside in the host Member State, in accordance with Article 7(1) of Directive 2004/38, up to the commencement of divorce proceedings, if that third-country national is to be able to claim the retention of his or her right of residence in that Member State, on the basis of Article 13(2) of that directive (judgment of 16 July 2015, *Singh and Others*, C-218/14, EU:C:2015:476, paragraph 66).

37 Those factors can be transposed to the circumstances of the main proceedings, with respect to the interpretation of Article 13(2)(c) of Directive 2004/38.

38 It is necessary to take into consideration the fact that that provision is part of Article 13(2) of Directive 2004/38, and consequently that provision must not be interpreted independently but interpreted in the light of the whole first subparagraph of Article 13(2).

39 In that regard, it should be recalled that, in order to determine the scope of a provision of EU law, its wording, context and objectives must all be taken into account (judgment of 10 October 2013, *Spedition Welter*, C-306/12, EU:C:2013:650, paragraph 17).

40 It is apparent, first, from the wording employed both in the heading and in the text of Article 13(2) of Directive 2004/38, that provision is made for the right of residence, to which, on the basis of that provision, a Union citizen's family members who do not have the nationality of a Member State are entitled, to be retained, in particular, in the event of divorce and that, as a consequence, when the conditions laid down in that provision are satisfied, divorce does not entail the loss of such a right of residence.

41 Second, as regards the context of that provision, Article 13(2) of Directive 2004/38 constitutes a derogation from the principle that Directive 2004/38 confers rights of entry into and residence in a Member State not on all third-country nationals, but solely on those who are a 'family member', within the meaning of point 2 of Article 2 of that directive, of a Union citizen who has exercised his

right of freedom of movement by settling in a Member State other than the Member State of which he is a national, that principle being established by the Court's settled case-law (see, inter alia, judgment of 16 July 2015, *Singh and Others*, C-218/14, EU:C:2015:476, paragraph 51).

42 Article 13(2) of Directive 2004/38 covers the exceptional cases where divorce does not mean the loss of the right of residence of the third-country nationals concerned, under Directive 2004/38, when, following their divorce, those third-country nationals no longer satisfy the conditions laid down in Article 7(2) of that directive, and in particular, the condition of being a 'family member' of a Union citizen, within the meaning of Article 2(2)(a) of that directive.

43 It must be added, first, that Article 12 of Directive 2004/38, which covers specifically the retention of the right of residence of family members in the event of the death or departure of the Union citizen, provides that the right of residence of his family members who do not have the nationality of a Member State is to be retained only in the event of the death of the Union citizen, and not in the event of his or her departure from the host Member State.

44 Second, it is therefore clear that, when that directive was adopted, the EU legislature declined to make provision, in the event of the departure from the host Member State of the Union citizen, for specific safeguards that would be available, on account of, inter alia, particularly difficult situations, to his family members who do not have the nationality of a Member State, that would be comparable to those provided for in Article 13(2)(c) of Directive 2004/38.

45 Last, as regards the aims of Article 13(2) of Directive 2004/38, that provision corresponds to the objective, stated in recital 15 in the preamble of that directive, of providing legal safeguards for family members in the event of the death of the Union citizen, divorce, annulment of marriage or termination of a registered partnership, taking measures in that respect to ensure that in such circumstances family members already residing within the territory of the host Member State retain their right of residence exclusively on a personal basis.

46 In that regard, it is apparent from the history of Directive 2004/38 and, more particularly, from the explanatory memorandum of 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/2001/0257 (final)), that, under EU law prior to Directive 2004/38, the divorced spouse could be deprived of the right of residence in the host Member State.

47 In that context, that proposal for a directive states that the purpose of the envisaged provision, now Article 13(2) of Directive 2004/38, was to offer certain legal safeguards to third-country nationals whose right of residence was dependent on a family relationship by marriage and who could therefore be open to blackmail accompanied by threats of divorce, and that safeguards were necessary only in the event of final divorce, since, in the event of *de facto* separation, the right of residence of a spouse who is a third-country national is not at all affected.

48 It follows from the foregoing that it is apparent from the wording, the context and objectives of Article 13(2) of Directive 2004/38 that the application of that provision, including the right derived from Article 13(2)(c) of Directive 2004/38, is dependent on the parties concerned being divorced.

49 It follows also that an interpretation of Article 13(2)(c) of Directive 2004/38 to the effect that a third-country national is entitled to rely on the right derived from that provision where her spouse, who is a Union citizen, has resided in the host Member State, in accordance with Article 7(1) of Directive 2004/38, not until the date of the commencement of divorce proceedings but, at the latest, until the date when the domestic violence occurred, is contrary to the literal, systematic and teleological interpretation of Article 13(2) of Directive 2004/38.

50 Accordingly, where, as in the main proceedings, a third-country national has been the victim during her marriage of domestic violence perpetrated by a Union citizen from whom she is divorced, that Union citizen must reside in the host Member State, in accordance with Article 7(1) of Directive 2004/38, until the date of the commencement of divorce proceedings, if that third-country national is to be entitled to rely on Article 13(2)(c) of that directive.

51 In the light of the foregoing, the answer to the first question is that Article 13(2)(c) of Directive 2004/38 must be interpreted as meaning that a third-country national, who is divorced from a Union citizen at whose hands she has been the victim of domestic violence during the marriage, cannot rely on the retention of her right of residence in the host Member State, on the basis of that provision, where the commencement of divorce proceedings post-dates the departure of the Union citizen spouse from that Member State.

The fourth question

52 By its fourth question, which can be examined by the Court in the second place, the referring court seeks, in essence, to ascertain whether Article 12 of Regulation No 1612/68 must be interpreted as meaning that a child and a third-country national parent who has sole custody of the child are entitled to a right of residence in the host Member State, under that provision, in a situation, such as that in the main proceedings, where the other parent is a Union citizen and has worked in that Member State, but has ceased to reside there before the date when the child begins to attend school in that Member State.

53 Under 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 are to be admitted to the latter State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if those children are residing in the territory of that State.

54 The right of access of the children of migrant workers to education in the host Member State, under that provision, depends on the child concerned first being settled in the host Member State, and consequently children who have settled in that Member State in their capacity as family members of a migrant worker, as well as the children of a migrant worker who have resided since birth in the Member State in which their father or mother is or was employed, may rely on that right in that Member State (see, to that effect, judgment of 23 February 2010, *Teixeira*, C-480/08, EU:C:2010:83, paragraph 45).

55 Article 12 of Regulation No 1612/68 seeks in particular to ensure that the children of a worker who is a national of a Member State can, even if that worker has ceased to be employed in the host Member State, undertake and, where appropriate, complete their education in the latter Member State (judgment of 23 February 2010, *Teixeira*, C-480/08, EU:C:2010:83, paragraph 51).

56 As is apparent from the very wording of Article 12 of Regulation No 1612/68, that right is not limited to children of active migrant workers, but applies also to children of former migrant workers. It accordingly follows that the right of children to equal treatment with respect to access to education does not depend on the fact that their father or mother retains the status of a migrant worker in the host Member State (see, to that effect, judgment of 23 February 2010, *Teixeira*, C-480/08, EU:C:2010:83, paragraph 50).

57 Further, the Court has held that the right derived by children from Article 12 of Regulation No 1612/68 is not dependent on the right of residence of their parents in the host Member State, since that provision requires only that the child has lived with his parents or one of them in a

Member State while at least one of the child's parents resided there as a worker (see, to that effect, judgment of 23 February 2010, *Ibrahim and Secretary of State for the Home Department*, C-310/08, EU:C:2010:80, paragraph 40).

58 In that regard, to accept that children of former migrant workers can continue their education in the host Member State although their parents no longer reside there is equivalent to allowing them a right of residence which is independent of that conferred on their parents, such a right being based on Article 12 (judgment of 23 February 2010, *Ibrahim and Secretary of State for the Home Department*, C-310/08, EU:C:2010:80, paragraph 41).

59 It therefore follows from the Court's case-law that Article 12 of Regulation No 1612/68 does not require, before a child can qualify for the right laid down by that provision, that the parent, the former migrant worker, should still reside in the host Member State on the date when the child begins to attend school or university, nor that the parent should continue to be present within that Member State throughout the period of attendance at school or university.

60 In this case, it is stated in the order for reference that KA, the spouse of the applicant in the main proceedings, resided in the United Kingdom either as a worker or as self-employed from the date of the couple's arrival in that Member State until the date of KA's departure from the United Kingdom, that is, throughout the period from March 2004 until December 2006.

61 It is also stated in the order for reference that MA and IA, the couple's daughters, were born in the United Kingdom and that they have lived in the United Kingdom since birth.

62 Accordingly, as children of a former migrant worker, who have resided since their birth in the Member State in which their father was employed, MA and IA satisfy the conditions required for them to be able to rely on Article 12 of Regulation No 1612/68.

63 Consequently, in circumstances such as those in the main proceedings, a child of a former migrant worker, who has resided since birth in the host Member State, qualifies for the right, first, to commence or to continue his or her education in that Member State, under Article 12 of Regulation No 1612/68 and, second, as a consequence, a right of residence based on that same provision. Whether the parent, the former migrant worker, does or does not reside in that Member State on the date when that child began to attend school, is of no relevance on that point.

64 Finally, according to the Court's case-law, the right of access to education implies that the child of a migrant worker or former migrant worker has an independent right of residence, when that child wishes to continue his or her education in the host Member State, and that the parent who is the child's primary carer has a corresponding right of residence (judgment of 13 June 2013, *Hadj Ahmed*, C-45/12, EU:C:2013:390, paragraph 46).

65 In circumstances such as those of the main proceedings, where the children enjoy, under Article 12 of Regulation No 1612/68, the right to continue their education in the host Member State although the parent who is their carer is at risk of losing her right of residence, if that parent were denied the possibility of remaining in the host Member State during the period of her children's education, that might deprive those children of a right which is granted to them by the EU legislature (see, to that effect, judgment of 17 September 2002, *Baumbast and R*, C-413/99, EU:C:2002:493, paragraph 71).

66 In this case, it is stated in the order for reference that NA was granted sole custody of her children.

67 Consequently, as the primary carer of MA and IA, NA also qualifies for a right of residence under Article 12 of Regulation No 1612/68.

68 In the light of the foregoing, the answer to the fourth question is that Article 12 of Regulation No 1612/68 must be interpreted as meaning that a child and a parent who is a third-country national and who has sole custody of that child qualify for a right of residence in the host Member State, under that provision, in a situation, such as that in the main proceedings, where the other parent is a Union citizen and worked in that Member State, but ceased to reside there before the child began to attend school in that Member State.

The second and third questions

69 By its second and third questions, which can be examined together, the referring court seeks, in essence, to ascertain whether Articles 20 and/or 21 TFEU must be interpreted as conferring a right of residence in the host Member State both on a minor Union citizen who has resided since birth in that Member State but is not a national of that Member State, and on the parent, a third-country national, who has sole custody of that minor, where the persons concerned qualify for a right of residence in that Member State under national or international law.

70 As a preliminary point, it must be recalled that, in accordance with the Court's settled case-law, Article 20 TFEU confers on every individual who is a national of a Member State citizenship of the Union, which is intended to be the fundamental status of nationals of the Member States (see judgments of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31, and 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraph 41 and the case-law cited).

71 On that basis, the Court has previously held that Article 20 TFEU precludes national measures which have the effect of depriving Union citizens of the genuine enjoyment of the substance of the rights conferred by virtue of their status as Union citizens (judgment of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraph 42).

72 The criterion relating to deprivation of the substance of the rights conferred by citizenship of the Union is specific in character inasmuch as it relates to situations in which, although secondary law on the right of residence of third country nationals is not applicable, a right of residence may not, exceptionally, be refused to a third country national, who is a family member of a Union citizen, since the effectiveness of Union citizenship enjoyed by that Union citizen would otherwise be undermined, if, as a consequence of such a refusal, that Union citizen would, in fact, have to leave the territory of the European Union as a whole, thereby depriving that citizen of the genuine enjoyment of the substance of the rights conferred by that status (see judgment of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraphs 66 and 67).

73 As regards a situation such as that at issue in the main proceedings, account must, first, be taken of the fact that both the applicant in the main proceedings and her daughters qualify for a right of residence in United Kingdom under Article 12 of Regulation No 1612/68, as stated in paragraph 66 of this judgment.

74 The first condition on which the possibility of claiming a right of residence in the host Member State under Article 20 TFEU, as interpreted by the Court in the judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124), depends, namely that the person concerned does not qualify for a right of residence in that Member State under European Union secondary law, is in this case not met.

75 As regards Article 21 TFEU, it must be recalled that, under that provision, the right to reside within the territory of the Member States is conferred on every citizen of the Union 'subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect'.

76 In particular, such limitations and conditions are those laid down in Article 7(1) of Directive 2004/38, and include the condition of having sufficient resources not to become a burden on the social assistance system of the host Member State during the period of residence, and having comprehensive sickness insurance cover, for the purposes of Article 7(1)(b) of that directive.

77 In that regard, the Court has previously held that the expression 'have' sufficient resources in that provision must be interpreted as meaning that it suffices that such resources are available to the Union citizen, and that that provision lays down no requirement whatsoever as to their origin, since they could be provided inter alia by the third-country national (judgment of 16 July 2015, *Singh and Others*, C-218/14, EU:C:2015:476, paragraph 74).

78 It follows that, provided that MA and IA satisfy the conditions laid down by Directive 2004/38 and, in particular, by Article 7(1) of the directive, either themselves, or through their mother, which it is for the referring court to determine, as German citizens, MA and IA can benefit from a right of residence in the United Kingdom, under Article 21 TFEU and Directive 2004/38.

79 Last, the Court has held that, where Article 21 TFEU and Directive 2004/38 grant a right to reside in the host Member State to a minor child who is a national of another Member State and who satisfies the conditions of Article 7(1)(b) of that directive, those same provisions allow a parent who is that national's primary carer to reside with that national in the host Member State (see judgment of 10 October 2013, *Alokpa and Moudoulou*, C-86/12, EU:C:2013:645, paragraph 29).

80 The Court has held that a refusal to allow a parent, whether a national of a Member State or of a third country, who is the carer of a minor child, who is a Union citizen and who has a right of residence under Article 21 TFEU and Directive 2004/38, to reside with that Union citizen in the host Member State would deprive that citizen's right of residence of any useful effect, since enjoyment by a young child of a right of residence necessarily implies that the child is entitled to be accompanied by the person who is his primary carer and accordingly that the carer must be in a position to reside with the child in the host Member State for the duration of such residence (see judgments of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraph 45, and 10 October 2013, *Alokpa and Moudoulou*, C-86/12, EU:C:2013:645, paragraph 28).

81 In the light of the foregoing, the answer to the second and third questions is as follows:

— Article 20 TFEU must be interpreted as meaning that it does not confer a right of residence in the host Member State either on a minor Union citizen, who has resided since birth in that Member State but is not a national of that State, or on a parent who is a third-county national and who has sole custody of that minor, where they qualify for a right of residence in that Member State under a provision of secondary EU law.

— Article 21 TFEU must be interpreted as meaning that it confers on a minor Union citizen a right of residence in the host Member State, provided that that citizen satisfies the conditions set out in Article 7(1) of Directive 2004/38, which it is for the referring court to determine. If so, that same provision allows the parent who is the primary carer of that Union citizen to reside with that citizen in the host Member State.

Costs

82 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 (First Chamber) hereby rules:

1. **Article 13(2)(c) 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 a third-country national, who is divorced from a Union citizen at whose hands she has been the victim of domestic violence during the marriage, cannot rely on the retention of her right of residence in the host Member State, on the basis of that provision, where the commencement of divorce proceedings post-dates the departure of the Union citizen spouse from that Member State.**

2. **Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as meaning that a child and a parent who is a third-country national and who has sole custody of that child qualify for a right of residence in the host Member State, under that provision, in a situation, such as that in the main proceedings, where the other parent is a Union citizen and worked in that Member State, but ceased to reside there before the child began to attend school in that Member State.**

3. **Article 20 TFEU must be interpreted as meaning that it does not confer a right of residence in the host Member State either on a minor Union citizen, who has resided since birth in that Member State but is not a national of that State, or on a parent who is a third-county national and who has sole custody of that minor, where they qualify for a right of residence in that Member State under a provision of secondary EU law.**

   Article 21 TFEU must be interpreted as meaning that that it confers on that minor Union citizen a right of residence in the host Member State, provided that that citizen satisfies the conditions set out in Article 7(1) of Directive 2004/38, which it is for the referring court to determine. If so, that same provision allows the parent who is the primary carer of that Union citizen to reside with that citizen in the host Member State.

[Signatures]