



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 September 2012*

(Directive 2004/38/EC — Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States — Article 3(2) — Obligation to facilitate, in accordance with national legislation, entry and residence for ‘any other family members’ who are dependants of a Union citizen)

In Case C-83/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom), made by decision of 3 February 2011, received at the Court on 22 February 2011, in the proceedings

Secretary of State for the Home Department

v

Muhammad Sazzadur Rahman,

Fazly Rabby Islam,

Mohibullah Rahman,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, A. Prechal, Presidents of Chambers, R. Silva de Lapuerta, K. Schiemann, E. Juhász, G. Arestis, M. Ilešič (Rapporteur), M. Berger and E. Jarašiūnas, Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 February 2012,

after considering the observations submitted on behalf of:

- the Centre for Advice on Individual Rights in Europe (AIRE Centre), by A. Weiss, N. Mole and S. Chaudary, legal advisers,
- the United Kingdom Government, by L. Seeboruth, acting as Agent, and R. Palmer, Barrister,
- the Belgian Government, by T. Materne, acting as Agent,

* Language of the case: English.

- the Danish Government, by C. Vang and V. Pasternak Jørgensen, acting as Agents,
- the German Government, by A. Wiedmann, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and L. D’Ascia, avvocato dello Stato,
- the Netherlands Government, by C. Wissels and M. Bulterman, acting as Agents,
- the Polish Government, by M. Szpunar, acting as Agent,
- the European Commission, by C. Tufvesson and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 March 2012,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 3(2) and 10(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, and corrigenda at OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).
- 2 The reference has been made in proceedings between the Secretary of State for the Home Department (‘the Secretary of State’) and Muhammad Sazzadur Rahman, Fazly Rabby Islam and Mohibullah Rahman, who are Bangladeshi nationals, concerning the application by those latter parties for a permit to reside in the United Kingdom as family members of a national of a State in the European Economic Area (‘the EEA’).

Legal context

Directive 2004/38

- 3 Recital 6 in the preamble to Directive 2004/38 states:

‘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 Directive 2004/38 provides that, for the purposes of the directive, ‘family member’ means:

‘(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership ...;

- (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 Directive 2004/38, headed '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.'

6 Article 10 of Directive 2004/38, headed 'Issue of residence cards', states:

'1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen" no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.

2. For the residence card to be issued, Member States shall require presentation of the following documents:

...

- (e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;

...'

National legislation

7 Directive 2004/38 was transposed in the United Kingdom by the Immigration (European Economic Area) Regulations 2006, as amended by the Immigration (European Economic Area) (Amendment) Regulations 2009 ('the Immigration Regulations').

8 Regulation 7 of the Immigration Regulations, headed 'Family member', provides:

'(1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person –

- (a) his spouse or his civil partner;
- (b) direct descendants of his, his spouse or his civil partner who are –
 - (i) under 21; or
 - (ii) dependants of his, his spouse or his civil partner;
- (c) dependent direct relatives in his ascending line or that of his spouse or his civil partner;
- (d) a person who is to be treated as the family member of that other person under paragraph (3).

...

- (3) ... a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.

...'

9 Regulation 8 of the Immigration Regulations, headed 'Extended family member', reads as follows:

- '(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).
- (2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and –
 - (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
 - (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
 - (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.
- (3) A person satisfies the condition in this paragraph if the person is a relative of an EEA national or his spouse or his civil partner and, on serious health grounds, strictly requires the personal care of the EEA national, his spouse or his civil partner.

...

- (6) In these Regulations "relevant EEA national" means, in relation to an extended family member, the EEA national who is or whose spouse or civil partner is the relative of the extended family member for the purpose of paragraph (2), (3) or (4) or the EEA national who is the partner of the extended family member for the purpose of paragraph (5).'

10 Regulation 17 of the Immigration Regulations, headed 'Issue of residence card', provides:

'...

- (4) The Secretary of State may issue a residence card to an extended family member not falling within regulation 7(3) who is not an EEA national on application if –
 - (a) the relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under regulation 15; and
 - (b) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.
- (5) Where the Secretary of State receives an application under paragraph (4) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.

...'

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

- 11 On 31 May 2006 Mahbur Rahman, a Bangladeshi national, married an Irish national working in the United Kingdom.
- 12 Following that marriage, his brother Muhammad Sazzadur Rahman, his half-brother Fazly Rabby Islam and his nephew Mohibullah Rahman applied for EEA family permits in order to obtain the right to reside in the United Kingdom as his and Mrs Rahman's dependants. Those applications were refused by the Entry Clearance Officer in Bangladesh on 27 July 2006 as the respondents in the main proceedings had been unable to demonstrate that they were dependent on Mr and Mrs Rahman in Bangladesh.
- 13 The respondents in the main proceedings then brought an appeal against that refusal before the Immigration Judge of the Asylum and Immigration Tribunal. The Immigration Judge allowed their appeal on 19 June 2007. The Immigration Judge found that they were entitled to benefit from the provisions of Article 3(2) of Directive 2004/38 and that, therefore, their entry into the United Kingdom had to be facilitated. Consequently, the respondents in the main proceedings were issued with EEA family permits and they were able to join Mr and Mrs Rahman in the United Kingdom.
- 14 On 9 January 2008 the respondents in the main proceedings applied for residence cards to confirm their right to reside in the United Kingdom. Those applications were refused by decision of 24 December 2008 of the Secretary of State, as the latter took the view that they had not proved that they had resided with Mrs Rahman, the relevant Union citizen, in the same EEA Member State before she came to the United Kingdom, or that they continued to be dependent on her or were members of her household in the United Kingdom.
- 15 An appeal against that decision was brought before the Immigration Judge of the Asylum and Immigration Tribunal, who held, on 6 April 2009, that the respondents in the main proceedings were indeed 'dependants' and, consequently, that their file had to be considered under regulation 17(4) and (5) of the Immigration Regulations.
- 16 The Secretary of State requested a reconsideration of that decision before the Upper Tribunal (Immigration and Asylum Chamber). Reconsideration was ordered by decision of 30 April 2009 and the case is before that tribunal as an appeal.
- 17 It was in those circumstances that the Upper Tribunal (Immigration and Asylum Chamber) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - '(1) Does Article 3(2) of [Directive 2004/38] require a Member State to make legislative provision to facilitate entry to and/or residence in a Member State to the class of other family members who are not nationals of the European Union who can meet the requirements of Article 10(2) [of that directive]?

- (2) Can such other family member referred to in Question 1 rely on the direct applicability of Article 3(2) of [Directive 2004/38] in the event that he cannot comply with any requirements imposed by national legislative provisions?
- (3) Is the class of other family members referred to in Article 3(2) and Article 10(2) of [Directive 2004/38] limited to those who have resided in the same country as the Union national and his or her spouse, before the Union national came to the host State?
- (4) Must any dependency referred to in Article 3(2) of [Directive 2004/38] on which the other family member relies to secure entry to the host State be dependency that existed shortly before the Union citizen moved to the host State?
- (5) Can a Member State impose particular requirements as to the nature or duration of dependency referred to in Article 3(2) of [Directive 2004/38] by such other family member so as to prevent such dependency being contrived or unnecessary to enable a non-national to be admitted to or continue to reside in its territory?
- (6) Must the dependency on which the other family member relies in order to be admitted to the Member State continue for a period or indefinitely in the host State for a residence card to be issued or renewed pursuant to Article 10 of [Directive 2004/38] and if so how should such dependency be demonstrated?

Consideration of the questions referred

Questions 1 and 2

- 18 With regard to the first and second questions, which it is appropriate to examine together, it should be pointed out at the outset that Directive 2004/38 does not oblige the Member States to grant every application for entry or residence submitted by persons who show that they are family members who are ‘dependants’ of a Union citizen, within the meaning of Article 3(2)(a) of that directive.
- 19 As contended by the governments which have submitted observations to the Court and by the European Commission, it follows both from the wording of Article 3(2) of Directive 2004/38 and from the general system of the directive that the European legislature has drawn a distinction between a Union citizen’s family members as defined in Article 2(2) of Directive 2004/38, who enjoy, as provided for in the directive, a right of entry into and residence in that citizen’s host Member State, and the other family members envisaged in Article 3(2) of the directive, whose entry and residence has only to be facilitated by that Member State.
- 20 That interpretation is borne out by recital 6 in the preamble to Directive 2004/38, which states that, ‘in order to maintain the unity of the family in a broader sense ..., 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’.
- 21 Whilst it is therefore apparent that Article 3(2) of Directive 2004/38 does not oblige the Member States to accord a right of entry and residence to persons who are family members, in the broad sense, dependent on a Union citizen, the fact remains, as is clear from the use of the words ‘shall facilitate’ in Article 3(2), that that provision imposes an obligation on the Member States to confer a

certain advantage, compared with applications for entry and residence of other nationals of third States, on applications submitted by persons who have a relationship of particular dependence with a Union citizen.

- 22 In order to meet that obligation, the Member States must, in accordance with the second subparagraph of Article 3(2) of Directive 2004/38, make it possible for persons envisaged in the first subparagraph of Article 3(2) to obtain a decision on their application that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons.
- 23 As is clear from recital 6 in the preamble to Directive 2004/38, it is incumbent upon the competent authority, when undertaking that examination of the applicant's personal circumstances, to take account of the various factors that may be relevant in the particular case, such as the extent of economic or physical dependence and the degree of relationship between the family member and the Union citizen whom he wishes to accompany or join.
- 24 In the light both of the absence of more specific rules in Directive 2004/38 and of the use of the words 'in accordance with its national legislation' in Article 3(2) of the directive, each Member State has a wide discretion as regards the selection of the factors to be taken into account. None the less, the host Member State must ensure that its legislation contains criteria which are consistent with the normal meaning of the term 'facilitate' and of the words relating to dependence used in Article 3(2), and which do not deprive that provision of its effectiveness.
- 25 Finally, even though, as the governments which have submitted observations have correctly observed, the wording used in Article 3(2) of Directive 2004/38 is not sufficiently precise to enable an applicant for entry or residence to rely directly on that provision in order to invoke criteria which should in his view be applied when assessing his application, the fact remains that such an applicant is entitled to a judicial review of whether the national legislation and its application have remained within the limits of the discretion set by that directive (see, by analogy, Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 56; Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405, paragraph 66; and Joined Cases C-165/09 to C-167/09 *Stichting Natuur en Milieu and Others* [2011] ECR I-4599, paragraphs 100 to 103).
- 26 In the light of the foregoing, the answer to the first and the second question referred is that, on a proper construction of Article 3(2) of Directive 2004/38:
- the Member States are not required to grant every application for entry or residence submitted by family members of a Union citizen who do not fall under the definition in Article 2(2) of that directive, even if they show, in accordance with Article 10(2) thereof, that they are dependants of that citizen;
 - it is, however, incumbent upon the Member States to ensure that their legislation contains criteria which enable those persons to obtain a decision on their application for entry and residence that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons;
 - the Member States have a wide discretion when selecting those criteria, but the criteria must be consistent with the normal meaning of the term 'facilitate' and of the words relating to dependence used in Article 3(2) and must not deprive that provision of its effectiveness; and
 - every applicant is entitled to a judicial review of whether the national legislation and its application satisfy those conditions.

Questions 3 and 4

- 27 By its third and fourth questions, which should also be examined together, the national tribunal asks in essence whether, in order to fall within the category, referred to in Article 3(2) of Directive 2004/38, of family members who are ‘dependants’ of a Union citizen, it is necessary to have resided in the same State as that citizen and to have been a dependant of that citizen shortly before or at the time when the latter settled in the host Member State.
- 28 As has been submitted by the Centre for Advice on Individual Rights in Europe (AIRE Centre), the Netherlands Government and the Commission in particular, the wording of Directive 2004/38 does not support the conclusion that family members of a Union citizen who do not fall under the definition in Article 2(2) of that directive and who have duly demonstrated their situation of dependence on that citizen can be excluded from the scope of Article 3(2) of the directive solely because they have not resided in the same State as that citizen.
- 29 Under Article 3(2) of Directive 2004/38, the Member States are to facilitate, in accordance with their national legislation, entry and residence for ‘any other family members ... 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’.
- 30 Also, Article 10(2)(e) of Directive 2004/38, relating to issue of residence cards, authorises the Member States to require family members referred to in Article 3(2) of the directive to present a ‘document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants ... of the Union citizen’.
- 31 As the Advocate General has explained in points 91, 92 and 98 of his Opinion, there is nothing to indicate that the term ‘country from which they have come’ or ‘country from which they are arriving’ [‘pays de provenance’] used in those provisions must be understood as referring to the country in which the Union citizen resided before settling in the host Member State. On the contrary, it is clear, on reading those provisions together, that the country referred to is, in the case of a national of a third State who declares that he is a ‘dependant’ of a Union citizen, the State in which he was resident on the date when he applied to accompany or join the Union citizen.
- 32 So far as concerns the time at which the applicant must be in a situation of dependence in order to be considered a ‘dependant’ within the meaning of Article 3(2) of Directive 2004/38, it is to be noted that, as follows from recital 6 in the directive’s preamble, the objective of that provision is to ‘maintain the unity of the family in a broader sense’ by facilitating entry and residence for persons who are not included in the definition of family member of a Union citizen contained in Article 2(2) of Directive 2004/38 but who nevertheless maintain close and stable family ties with a Union citizen on account of specific factual circumstances, such as economic dependence, being a member of the household or serious health grounds.
- 33 It is clear that such ties may exist without the family member of the Union citizen having resided in the same State as that citizen or having been a dependant of that citizen shortly before or at the time when the latter settled in the host State. On the other hand, the situation of dependence must exist, in the country from which the family member concerned comes, at the time when he applies to join the Union citizen on whom he is dependent.
- 34 In the main proceedings, it is for the national tribunal to establish, on the basis of the guidance as to interpretation provided above, whether the respondents in the main proceedings were dependants of the Union citizen, in this instance Mrs Rahman, in the country from which they have come, Bangladesh, at the time when they applied to join her in the United Kingdom. It is only if they can prove that dependence in the country from which they have come, in accordance with Article 10(2) of Directive 2004/38, that the host Member State will have to facilitate their entry and residence in accordance with Article 3(2) of that directive, as interpreted in paragraphs 22 to 25 of the present judgment.

35 In the light of the foregoing, the answer to the third and the fourth question referred is that, in order to fall within the category, referred to in Article 3(2) of Directive 2004/38, of family members who are ‘dependants’ of a Union citizen, the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent.

Question 5

36 By its fifth question, the national tribunal asks, in essence, whether a Member State may impose particular requirements as to the nature or duration of dependence as referred to in Article 3(2) of Directive 2004/38, in order to satisfy itself that such dependence is genuine and stable and has not been brought about with the sole objective of obtaining entry into and residence in its territory.

37 As has been stated in answering the first and the second question, the Member States have a wide discretion as regards the selection of the factors to be taken into account when examining applications for entry and residence submitted by family members of a Union citizen who are envisaged in Article 3(2) of Directive 2004/38.

38 As the Advocate General has observed in point 105 of his Opinion, the Member States may, in the exercise of that discretion, lay down in their legislation particular requirements as to the nature and duration of dependence, in order in particular to satisfy themselves that the situation of dependence is genuine and stable and has not been brought about with the sole objective of obtaining entry into and residence in the host Member State.

39 It is necessary however, as has been held in paragraph 24 of the present judgment, that those requirements be consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2)(a) of Directive 2004/38 and do not deprive that provision of its effectiveness.

40 Accordingly, the answer to the fifth question referred is that, on a proper construction of Article 3(2) of Directive 2004/38, the Member States may, in the exercise of their discretion, impose particular requirements relating to the nature and duration of dependence, provided that those requirements are consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2)(a) of the directive and do not deprive that provision of its effectiveness.

Question 6

41 By its sixth question, the national tribunal asks, in essence, whether issue of the residence card referred to in Article 10 of Directive 2004/38 may be conditional on the requirement that the situation of dependence for the purposes of Article 3(2)(a) of that directive has endured in the host Member State.

42 With regard to issue of the residence card referred to by Directive 2004/38, the European Union legislature essentially confined itself to listing, in Article 10 of that directive, the documents to be presented in order to obtain such a card, which is then to be furnished within six months from the date on which the application was submitted.

43 So far as concerns the applicants envisaged in Article 3(2)(a) of Directive 2004/38, Article 10 of the directive states that those applicants must present inter alia ‘a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants ... of the Union citizen’.

44 The legislature did not settle, either in that provision or in other provisions of Directive 2004/38, the question whether family members of a Union citizen who do not fall under the definition in Article 2(2) of the directive and who apply for issue of a residence card by presenting a document,

issued in the country from which they have arrived, certifying their dependence on that Union citizen can be refused a residence card on the ground that, after their entry into the host Member State, they have ceased to be dependants of that citizen.

- 45 The answer to the sixth question therefore is that the question whether issue of the residence card referred to in Article 10 of Directive 2004/38 may be conditional on the requirement that the situation of dependence for the purposes of Article 3(2)(a) of that directive has endured in the host Member State does not fall within the scope of the directive.

Costs

- 46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national tribunal, the decision on costs is a matter for that tribunal. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **On a proper construction 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:**
 - the Member States are not required to grant every application for entry or residence submitted by family members of a Union citizen who do not fall under the definition in Article 2(2) of that directive, even if they show, in accordance with Article 10(2) thereof, that they are dependants of that citizen;
 - it is, however, incumbent upon the Member States to ensure that their legislation contains criteria which enable those persons to obtain a decision on their application for entry and residence that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons;
 - the Member States have a wide discretion when selecting those criteria, but the criteria must be consistent with the normal meaning of the term ‘facilitate’ and of the words relating to dependence used in Article 3(2) and must not deprive that provision of its effectiveness; and
 - every applicant is entitled to a judicial review of whether the national legislation and its application satisfy those conditions.
2. **In order to fall within the category, referred to in Article 3(2) of Directive 2004/38, of family members who are ‘dependants’ of a Union citizen, the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent.**
3. **On a proper construction of Article 3(2) of Directive 2004/38, the Member States may, in the exercise of their discretion, impose particular requirements relating to the nature and duration of dependence, provided that those requirements are consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2)(a) of the directive and do not deprive that provision of its effectiveness.**
4. **The question whether issue of the residence card referred to in Article 10 of Directive 2004/38 may be conditional on the requirement that the situation of dependence for the purposes of Article 3(2)(a) of that directive has endured in the host Member State does not fall within the scope of the directive.**

[Signatures]