



## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

16 July 2015\*

(Reference for a preliminary ruling — Directive 2004/38/EC — Article 13(2)(a) — Right of residence of family members of a Union citizen — Marriage between a Union citizen and a third-country national — Retention of the right of residence of a third-country national after the departure of the Union citizen from the host Member State, followed by divorce — Article 7(1)(b) — Sufficient resources — Taking into account the resources of the spouse who is a third-country national — Right of third-country nationals to work in the host Member State in order to contribute to obtaining sufficient resources)

In Case C-218/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 25 February 2014, received at the Court on 5 May 2014, in the proceedings

**Kuldip Singh,**

**Denzel Njume,**

**Khaled Aly**

v

**Minister for Justice and Equality,**

intervener:

**Immigrant Council of Ireland,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta (Rapporteur), A. Ó Caoimh, J.-C. Bonichot, Presidents of Chambers, A. Arabadjiev, M. Safjan, M. Berger, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 23 March 2015,

\* Language of the case: English.

after considering the observations submitted on behalf of:

- Mr Singh, by C. O'Dwyer and R. Haughton, Senior Counsel, P. Brazil, Barrister-at-Law, J. Boyle and M. Griffin, Solicitors,
- Mr Njume, by M. Lynn and R. Haughton, Senior Counsel, P. Brazil and C. Stanley, Barristers-at-Law,
- Mr Aly, by M. Lynn, Senior Counsel, A. McMahon, Barrister-at-Law, and E. Lyons, Solicitor,
- the Immigrant Council of Ireland, by P. Dillon Malone, Senior Counsel, A. Lowry, Barrister-at-Law, and H. Becker, Solicitor,
- Ireland, by E. Creedon and G. Samuel, acting as Agents, D. Conlan Smyth, Senior Counsel, and F. O'Sullivan, Barrister-at-Law,
- the Danish Government, by C. Thorning and M. Wolff, acting as Agents,
- the Greek Government, by T. Papadopoulou, acting as Agent,
- the Spanish Government, by L. Banciella Rodríguez-Miñón, acting as Agent,
- the Polish Government, by B. Majczyna, acting as Agent,
- the United Kingdom Government, by V. Kaye, acting as Agent, B. Lask and G. Facenna, Barristers,
- the European Commission, by M. Wilderspin, J. Tomkin and C. Tufvesson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 May 2015,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 7(1)(b) and 13(2)(a) 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, corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).
- 2 The request has been made in three sets of proceedings between Mr Singh, Mr Njume and Mr Aly and the Minister for Justice and Equality ('the Minister') concerning the Minister's rejection of their applications for retention of their right of residence in Ireland following their divorces.

## Legal context

### *EU law*

- 3 According to recital 15 in the preamble to Directive 2004/38:

‘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 the directive, entitled ‘Definitions’, provides:

‘For the purposes 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 of the directive, entitled ‘Beneficiaries’, provides in paragraph 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.’

- 6 Article 7 of the directive, entitled ‘Right of residence for more than three months’, provides in paragraphs 1 and 2:

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

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

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

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

- have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or

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

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

7 Article 12 of the directive, entitled 'Retention of the right of residence by family members in the event of death or departure of the Union citizen', states:

'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 of the directive, entitled 'Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership', provides in paragraph 2:

'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 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 ...

...

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 of the directive, entitled ‘Retention of the right of residence’, provides in paragraph 2:

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

...’

#### *Irish law*

- 10 The European Communities (Free Movement of Persons) (No 2) Regulations, 2006 (SI No 656 of 2006; ‘the 2006 Regulations’) transpose Directive 2004/38 into Irish law.

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

##### *The first case in the main proceedings*

- 11 Mr Singh is an Indian national who arrived in Ireland on 6 February 2002 with a student visa and subsequently resided lawfully in Ireland.
- 12 On 11 November 2005 Mr Singh married a Latvian national who was working and residing lawfully in Ireland. A child of that marriage, who also has Latvian nationality, was born on 3 December 2007.
- 13 After judgment was delivered in *Metock and Others* (C-127/08, EU:C:2008:449) and in accordance with Directive 2004/38, Mr Singh was granted permission to reside in Ireland for five years as the spouse of a Union citizen residing and exercising rights under the FEU Treaty in Ireland.
- 14 Mr Singh’s wife was continuously employed from 2004 until 2009 in various jobs.
- 15 In 2009 Mr Singh opened and operated with a partner a pizzeria in Ireland, under a franchise agreement dated 29 May 2009 for an initial term of 10 years. Thereafter he supported his family financially while his wife stayed at home and cared for their son.
- 16 Mr and Mrs Singh experienced difficulties in their marriage, and Mrs Singh left Ireland in February 2010 and instituted divorce proceedings in Latvia in September 2010. The divorce was pronounced with effect from 12 May 2011.
- 17 On 14 December 2011, following the divorce, Mr Singh applied to the Minister for retention of his permission to remain and for a permanent residence document in Ireland, pursuant to Directive 2004/38 and the national measures transposing it, on the ground that he had been married to a Union

citizen, was the father of a Union citizen, and satisfied the necessary legislative conditions as his marriage had lasted for at least three years, including one in Ireland. At that time he was either a worker or a self-employed person.

18 By decision of 30 April 2012, the Minister refused the applications, stating inter alia the following reasons:

‘... as [your ex-spouse] left [Ireland] in 2010 she is no longer deemed to be exercising her EU Treaty rights in the State in accordance with the provisions of Regulation 6(2)(a) of the [2006] Regulations [and] she no longer enjoys the right of residence in the State under Regulation 6 [of the 2006 Regulations]. Accordingly it is not therefore possible for you ... to derive a right of residence from [your ex-spouse] under the provisions of Regulation 6(2)(b) [of the 2006 Regulations].’

19 Mr Singh sought a review of that decision, on the ground that he had a personal right of residence in Ireland in accordance with Regulation 10 of the 2006 Regulations, transposing Article 13 of Directive 2004/38.

20 By letter of 12 November 2012, the Minister’s review unit informed Mr Singh that his application for review was unsuccessful.

21 However, in view of the particular situation of Mr Singh, he was granted by that letter a renewable permission to remain in Ireland for one year, as an exceptional measure, and that permission authorised him to reside and work without the need for a work permit. He was thus able under national law to engage in business in Ireland.

*The second case in the main proceedings*

22 Mr Njume, who stated that he was a national of Cameroon, applied for asylum in Germany on 6 January 2004.

23 Mr Njume claims that in January 2005 he met a German national, with whom he had a relationship and thereafter lived in Eslohe (Germany) for about 18 months.

24 Mr Njume entered Ireland illegally and applied for asylum there on 4 September 2006. On 4 January 2007 he married his partner at the register office in Cork (Ireland).

25 After judgment was delivered in *Metock and Others* (C-127/08, EU:C:2008:449) and in accordance with Directive 2004/38, Mr Njume was by decision of 3 December 2008 granted permission to reside in Ireland for five years as the spouse of a Union citizen residing and exercising rights under the FEU Treaty in Ireland. That permission to reside, which had retroactive effect from 11 October 2007, was accompanied by the issue of a residence card.

26 Mr Njume, who thereafter found employment, submits that he and his wife lived together in Ireland throughout the period from late 2006 to January 2011, apart from three visits to the United Kingdom of 10 days each for his wife to seek employment there. He claims that he supported her from his own earnings from 2008 to 2011.

27 By letter of 25 February 2011, the Minister was informed that Mr Njume’s wife had left Ireland in early 2011 and returned to Germany. By letter of 25 March 2011, Mr Njume claimed that, pursuant to Regulation 9 of the 2006 Regulations transposing Article 12 of Directive 2004/38, his right of residence in Ireland was retained in the event of the departure from Ireland of the Union citizen.

28 On 14 June 2011 Mr Njume’s wife initiated divorce proceedings in the United Kingdom.



- 29 By letter of 12 July 2011, the Minister informed Mr Njume that Regulation 9 of the 2006 Regulations did not apply to his situation. By letter of 22 July 2011, Mr Njume informed the Minister of the petition for divorce.
- 30 On 21 December 2011 the High Court of Justice of England and Wales (Family Division) (United Kingdom) issued a decree nisi stating that on that date Mr Njume and his spouse had been found to have ‘lived apart for a continuous period of at least two years immediately preceding the presentation of the petition’ for divorce. A decree absolute was issued on 28 March 2012.
- 31 Following the divorce, Mr Njume applied for the retention of his right to reside in Ireland, on the basis of Regulation 10 of the 2006 Regulations transposing Article 13(2) of Directive 2004/38.
- 32 By decision of 21 September 2012, the Minister refused to grant Mr Njume that right of residence under Regulation 10(2) of the 2006 Regulations.
- 33 By decision of 12 September 2013, Mr Njume was granted a renewable permission to remain in Ireland for three years, in accordance with national law, until 12 September 2016.

*The third case in the main proceedings*

- 34 Mr Aly, who is an Egyptian national, entered Ireland on 14 March 2007 with a visitor’s visa allowing him to remain there until 14 June 2007. On 12 July 2007, in Ireland, he married a Lithuanian national. On 21 August 2008 he was issued with a residence card with retroactive effect from 3 February 2008, pursuant to the 2006 Regulations. The card was valid for five years, until 2 February 2013.
- 35 Mr Aly’s wife worked in Ireland from 1 May 2004 to January 2009, when she lost her job as a result of the economic downturn. She received unemployment benefit until June 2009. Mr and Mrs Aly lived on his earnings, while she looked for employment. In March 2011 she went to the United Kingdom to work there for a short period.
- 36 By letter of 14 August 2012, Mr Aly informed the Irish Naturalisation and Immigration Service (INIS) that in the six months following his wife’s move to London (United Kingdom) to work there the couple had separated. Mrs Aly wished to stay in London, while he did not wish to move there.
- 37 By letter of 3 October 2012, the INIS informed Mr Aly that it intended to terminate his permission to reside in Ireland, and invited him to make representations.
- 38 By letter of 15 October 2012, Mr Aly informed the INIS that divorce proceedings had been brought in Lithuania and that a decree of divorce would be issued shortly. He submitted that, pursuant to Article 13 of Directive 2004/38, he was entitled to remain in Ireland.
- 39 By decision of 12 November 2012 (‘the contested decision’), the INIS withdrew Mr Aly’s permission to reside in Ireland. The decision stated inter alia:

‘It is further noted that [your spouse] has left the State and has not exercised EU Treaty rights in the State in compliance with Regulation 6(2) [of the 2006 Regulations] for a considerable period of time. As such, please note that the grounds under which you were granted permission to remain no longer apply as your derived right under the provisions of the [2006 Regulations] was no longer valid once your EU national spouse ceased exercising EU Treaty rights in the State. Regulation 10(2) [of the 2006 Regulations] refers to retention of a right of residence on an individual and personal basis in the event

of divorce, however, given that you are not divorced and your right of residence ceased to be valid when [your spouse] ceased exercising EU Treaty rights in the State, there is no entitlement to retention.'

- 40 Following notification of the contested decision, Mr Aly reported to the competent immigration authorities, as he had been required to do, and an officer destroyed his residence card. The officer also contacted Mr Aly's employer in order to prevent him from continuing to work.
- 41 On 10 December 2012 the High Court granted Mr Aly leave to apply for judicial review of the contested decision.
- 42 On the basis of those proceedings, Mr Aly was granted, by decision of 17 December 2012, temporary permission to work and remain in Ireland.
- 43 On 12 March 2013 a certificate of divorce was issued to the parties by the Lithuanian authorities.
- 44 In that context the High Court, in the three cases in the main proceedings, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '1. Where marriage involving EU and non-EU citizens ends in divorce obtained following departure of the EU citizen from a host Member State where EU rights were exercised by the EU citizen, and where Articles 7 and 13(2)(a) of Council Directive 2004/38/EC apply, does the non-EU citizen retain a right of residence in the host Member State thereafter? If the answer is "no", does the non-EU citizen have a right of residence in the host Member State during the period before divorce following departure of the EU citizen from the host Member State?
  2. Are the requirements of Article 7(1)(b) of Directive 2004/38/EC met where an EU citizen spouse claims to have sufficient resources within the meaning of Article 8(4) of the directive partly on the basis of the resources of the non-EU citizen spouse?
  3. If the answer to the second question is "no", do persons such as the applicants have rights under EU law (apart from the directive) to work in the host Member State in order to provide or contribute to "sufficient resources" for the purposes of Article 7 of the directive?

## **Consideration of the questions referred**

### *Preliminary observations*

- 45 The present case concerns three nationals of third countries who, following marriage with Union citizens residing and working in Ireland, acquired a right of residence in Ireland, for periods from three months to five years, under Article 7(2) of Directive 2004/38 as spouses accompanying or joining a Union citizen in the host Member State.
- 46 In the three cases in the main proceedings, it is common ground that, before those periods expired, the spouses who were Union citizens left Ireland to settle in another Member State, while the spouses who were third-country nationals remained in Ireland.
- 47 It is also common ground that, at some time after their departure, the spouses who were Union citizens brought proceedings for divorce which led to judicial decisions dissolving the marriages between them and the third-country nationals concerned.



*Question 1*

- 48 By its first question, the referring court asks essentially whether Article 13(2) of Directive 2004/38 must be interpreted as meaning that a third-country national, divorced from a Union citizen, whose marriage lasted for at least three years before the commencement of divorce proceedings, including at least one year in the host Member State, may retain a right of residence in that Member State on the basis of that provision where the divorce is preceded by the departure of the spouse who is a Union citizen from that Member State.
- 49 It is therefore necessary to determine what conditions are required for the application of Article 13(2)(a) of Directive 2004/38, and in particular whether the spouse who is a Union citizen of a third-country national must reside in the host Member State, in accordance with Article 7(1) of the directive, until the date on which the divorce is decreed for the third-country national to be able to rely on Article 13(2) of the directive.
- 50 As regards the right of residence in the host Member State of nationals of third countries who are family members of a Union citizen, attention should be drawn, as a preliminary point, to the settled case-law of the Court which states that the rights conferred on third-country nationals by Directive 2004/38 are not autonomous rights of those nationals but rights derived from the exercise of freedom of movement by a Union citizen. The purpose and justification of those derived rights are based on the fact that a refusal to allow such rights would be liable to interfere with the Union citizen's freedom of movement by discouraging him from exercising his rights of entry into and residence in the host Member State (see, to that effect, judgment in *O and B*, C-456/12, EU:C:2014:135, paragraphs 36 and 45 and the case-law cited).
- 51 It must also be recalled that it is not all third-country nationals who derive rights of entry into and residence in a Member State from Directive 2004/38, but only those who are a 'family member' within the meaning of Article 2(2) of that directive of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national (judgment in *Iida*, C-40/11, EU:C:2012:691, paragraph 51 and the case-law cited).
- 52 Moreover, Article 3(1) of Directive 2004/38 requires that the family member of the Union citizen moving to or residing in a Member State other than that of which he is a national should accompany or join him, in order to be a beneficiary of the directive (see judgment in *Iida*, C-40/11, EU:C:2012:691, paragraph 61).
- 53 Article 7 of Directive 2004/38, which concerns the right of residence for more than three months, likewise requires that the family members of a Union citizen who are not nationals of a Member State 'accompany' or 'join' him in the host Member State in order to enjoy a right of residence there (judgment in *Metock and Others*, C-127/08, EU:C:2008:449, paragraph 86).
- 54 According to the Court's case-law, the condition that the third-country national must accompany or join the Union citizen must be understood as referring not to an obligation for the spouses to live together but an obligation for them both to remain in the Member State in which the spouse who is a Union citizen exercises his right of freedom of movement (see, to that effect, judgment in *Ogieriakhi*, C-244/13, EU:C:2014:2068, paragraph 39).
- 55 Thus nationals of third countries who are family members of a Union citizen can claim the right of residence provided for by Directive 2004/38 only in the host Member State in which the Union citizen resides, and not in another Member State (see, to that effect, judgment in *Iida*, C-40/11, EU:C:2012:691, paragraphs 63 and 64).

- 56 Furthermore, Article 7(2) of Directive 2004/38 grants family members of a Union citizen who are third-country nationals, accompanying or joining the Union citizen in the host Member State, a right of residence for more than three months in that Member State, provided that the Union citizen himself satisfies the conditions referred to in Article 7(1)(a), (b) or (c) of the directive.
- 57 Finally, under Article 14(2) of Directive 2004/38, the right of the family members of a Union citizen to reside in the host Member State on the basis of Article 7(2) of the directive continues only as long as they meet the conditions laid down in that provision.
- 58 It follows that, where a Union citizen in a situation such as that of the spouses of the applicants in the main proceedings leaves the host Member State and settles in another Member State or in a third country, the spouse of that Union citizen who is a third-country national no longer meets the conditions for enjoying a right of residence in the host Member State under Article 7(2) of Directive 2004/38. It must, however, be examined whether, and under what conditions, that spouse can claim a right of residence on the basis of Article 13(2)(a) of Directive 2004/38 where the departure of the Union citizen is followed by a divorce.
- 59 In accordance with Article 13(2)(a) of Directive 2004/38, divorce does not entail the loss of the right of residence of a Union citizen's family members who are not nationals of a Member State 'where ... prior to initiation of the divorce ... proceedings ... the marriage ... has lasted at least three years, including one year in the host Member State'.
- 60 That provision thus corresponds to the purpose, stated in recital 15 in the preamble to the 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.
- 61 The reference in that provision to, first, 'the host Member State', which is defined in Article 2(3) of Directive 2004/38 only by reference to the exercise of the Union citizen's right of free movement and residence, and, secondly, 'initiation of the divorce ... proceedings' necessarily implies that the right of residence of the Union citizen's spouse who is a third-country national can be retained on the basis of Article 13(2)(a) of Directive 2004/38 only if the Member State in which that national resides is the 'host Member State' within the meaning of Article 2(3) of Directive 2004/38 on the date of commencement of the divorce proceedings.
- 62 That is not the case, however, if, before the commencement of those proceedings, the Union citizen leaves the Member State in which his spouse resides for the purpose of settling in another Member State or a third country. In that event the third-country national's derived right of residence based on Article 7(2) of Directive 2004/38 has come to an end with the departure of the Union citizen and can therefore no longer be retained on the basis of Article 13(2)(a) of that directive.
- 63 It follows that, if on the date of commencement of the divorce proceedings the third-country national who is the spouse of a Union citizen enjoyed a right of residence on the basis of Article 7(2) of Directive 2004/38, that right is retained, on the basis of Article 13(2)(a) of that directive, both during the divorce proceedings and after the decree of divorce, provided that the conditions laid down in the second subparagraph of Article 13(2) of the directive are satisfied.
- 64 However, in the three cases in the main proceedings, the spouses who are Union citizens of the third-country nationals concerned left the host Member State and settled in another Member State even before the divorce proceedings had been commenced.

- 65 As stated in paragraph 58 above, after the departure of the spouse who is a Union citizen, the spouse who is a third-country national no longer meets the conditions for enjoying a right of residence in the host Member State under Article 7(2) of Directive 2004/38.
- 66 Consequently, it is clear that the spouse who is a Union citizen 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 date of commencement of the divorce proceedings for that third-country national to be able to claim the retention of his right of residence in that Member State on the basis of Article 13(2) of the directive.
- 67 It follows that, as the Advocate General observes in point 27 of her Opinion, in circumstances such as those at issue in the main proceedings, 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 stays behind in the host Member State. The later 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.
- 68 That does not mean that, under national law, which may grant more extensive protection, a national of a third country, in circumstances such as those of the main proceedings, may not be authorised — as in the present cases — to continue to reside in the Member State concerned (see, to that effect, judgment in *Melloni*, C-399/11, EU:C:2013:107, paragraph 60).
- 69 Indeed, in the three cases in the main proceedings, the applicants were, after being divorced, granted temporary permission under national law to reside and work in Ireland, as a result of which they were able to continue to reside there legally, and that permission was in principle renewable, as may be seen from the order for reference.
- 70 Having regard to the above considerations, the answer to Question 1 is that Article 13(2) of Directive 2004/38 must be interpreted as meaning that a third-country national, divorced from a Union citizen, whose marriage lasted for at least three years before the commencement of divorce proceedings, including at least one year in the host Member State, cannot retain a right of residence in that Member State on the basis of that provision where the commencement of the divorce proceedings is preceded by the departure from that Member State of the spouse who is a Union citizen.

## Question 2

- 71 By its second question, the referring court essentially asks whether Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that a Union citizen has sufficient resources for himself and his family members not to become a burden on the social assistance system of the host Member State during his period of residence even where those resources derive in part from those of the spouse who is a third-country national.
- 72 According to the order for reference, in the three cases in the main proceedings, before the departure from the host Member State of the spouse who was a Union citizen, there was found to be a period during which that spouse was not working in that State, so that it was the spouse who was a third-country national who supported the family with the income derived from his activity in that Member State.
- 73 It follows from Article 7(1)(b) and (2) of Directive 2004/38 that, whatever their nationality, the family members of a Union citizen who is residing in another Member State without being a worker or self-employed person there have the right to accompany or join that citizen, provided that he has sufficient resources for himself and the family members and has comprehensive sickness insurance cover in the host Member State (judgment in *Ibrahim and Secretary of State for the Home Department*, C-310/08, EU:C:2010:80, paragraph 28).

- 74 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 (see judgment in *Alokpa and Moudoulou*, C-86/12, EU:C:2013:645, paragraph 27 and the case-law cited).
- 75 As the Court has also previously held, an interpretation of the condition concerning the sufficiency of resources as meaning that the person concerned must have such resources himself, without being able to use for that purpose the resources of an accompanying family member, would add to that condition, as formulated in Directive 2004/38, a requirement as to the origin of the resources which, not being necessary for the attainment of the objective pursued, namely the protection of the public finances of the Member States, would constitute a disproportionate interference with the exercise of the fundamental right of freedom of movement and residence guaranteed by Article 21 TFEU (see, to that effect, judgment in *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraph 33).
- 76 It follows that the fact that some part of the resources available to the Union citizen derives from resources obtained by the spouse who is a third-country national from his activity in the host Member State does not preclude the condition concerning the sufficiency of resources in Article 7(1)(b) of Directive 2004/38 from being regarded as satisfied.
- 77 Having regard to the above considerations, the answer to Question 2 is that Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that a Union citizen has sufficient resources for himself and his family members not to become a burden on the social assistance system of the host Member State during his period of residence even where those resources derive in part from those of his spouse who is a third-country national.

### Question 3

- 78 In view of the answer to Question 2, there is no need to reply to Question 3.

### Costs

- 79 Since these proceedings are, for the parties to the main proceedings, a step in the actions 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 (Grand Chamber) hereby rules:

- Article 13(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 a third-country national, divorced from a Union citizen, whose marriage lasted for at least three years before the commencement of divorce proceedings, including at least one year in the host Member State, cannot retain a right of residence in that Member State on the basis of that provision where the commencement of the divorce proceedings is preceded by the departure from that Member State of the spouse who is a Union citizen.**

2. **Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that a Union citizen has sufficient resources for himself and his family members not to become a burden on the social assistance system of the host Member State during his period of residence even where those resources derive in part from those of his spouse who is a third-country national.**

[Signatures]