Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 15 November 2018 [1]

Case C-483/17

Neculai Tarola
v
Minister for Social Protection

(Request for a preliminary ruling from the Court of Appeal (Ireland))

(Reference for a preliminary ruling — Citizenship of the Union — Freedom of movement for persons — Directive 2004/38/EC — Right to move and reside freely within the territory of Member States — Article 7(1)(a) — Workers — Article 7(3)(c) — Right of residence for more than three months — National of a Member State who has been working in an employed capacity in another Member State for 15 days — Involuntary unemployment — Retaining the status of worker for no less than six months)

I. Introduction

1. Where a citizen of the Union exercises his right of free movement and residence in accordance with Directive 2004/38/EC [2] and works in a Member State other than his own for a period of two weeks, and becomes involuntarily unemployed, does that citizen retain the status of worker and, therefore, the corresponding right of residence?

2. That is, in essence, the question referred to the Court of Justice for a preliminary ruling by the Court of Appeal (Ireland). The question was raised in the context of an action brought by a Romanian national against the Irish Minister for Social Protection ('the Minister') following the Minister's rejection of his application for jobseeker's allowance.

3. In the present case, the Court is therefore asked for the first time to interpret Article 7(3)(c) of that directive.

1 Original language: French.

2 Directive 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).

II. Legal context

A. European Union law

4. Recitals 3, 9 and 10 of Directive 2004/38 state:

‘(3) Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.

…

(9) Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to jobseekers as recognised by the case-law of the Court of Justice.

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

5. Article 1 of that directive provides:

‘This directive lays down:

(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;

…’

6. Article 7 of that directive, entitled ‘Right of residence for more than three months’, provides, in paragraphs 1 and 3 thereof:

‘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 …

…

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

…

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant employment office;

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months and has registered as a jobseeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

…'

B. Irish law

7. Article 6(2)(a) and (c) of the European Communities (Free Movement of Persons) Regulations (No 2) 2006 ('the 2006 Regulations'), which transposed the provisions of Article 7(3) of Directive 2004/38 into Irish law, provides:

'(a) Subject to Regulation 20, a Union citizen may reside in the State for a period longer than 3 months if he or she –

(i) is in employment or is self-employed in the State

…

(c) Subject to Regulation 20, a person to whom subparagraph (a)(i) applies may remain in the State on cessation of the activity referred to in that subparagraph if –

…

(ii) he or she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with a relevant office of the Department of Social and Family Affairs and FÁS [Foras Áiseanna Saothair, Irish National Training and Employment Authority] …

(iii) subject to subparagraph (d), he or she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first year and has registered as a jobseeker with a relevant office of the Department of Social and Family Affairs and FÁS [Foras Áiseanna Saothair, Irish National Training and Employment Authority] …'.

III. The facts, the question referred and the procedure before the Court

8. Mr Neculai Tarola is a Romanian citizen who first arrived in Ireland in May 2007 where he was employed from 5 July to 30 July 2007, and again from 15 August to 14 September 2007. It has not been established whether he resided in Ireland between 2007 and 2013. However, it is not disputed that he was subsequently employed in Ireland from 22 July to 24 September 2013 by ASF Recruitment Ltd and from 8 July to 22 July 2014 by Marren Brothers Ltd. In respect of his employment at Marren Brothers Ltd, he earned EUR 1 309. He also worked as a self-employed subcontractor from 17 November to 5 December 2014.

9. On 21 September 2013, Mr Tarola submitted an application for jobseeker's allowance to the Minister. That application was refused on the ground that he had failed to adduce evidence of his habitual residence in Ireland or means of support from 15 September 2007 to 22 July 2013.

10. On 26 November 2013, Mr Tarola applied for supplementary welfare allowance. That application was also refused because he could not adduce supporting documentation to demonstrate how he supported himself and paid rent from September 2013 to 14 April 2014.

11. Mr Tarola therefore sought a statutory review of the decision of 26 November 2014 before the Minister. That action was dismissed on the ground that Mr Tarola's short period of employment in July 2014 was not sufficient to revisit the finding that he was not habitually resident in Ireland. It is established that Mr Tarola registered as a jobseeker with the relevant employment office.

12. On 10 March 2015, Mr Tarola asked the Minister to review the decision of 26 November 2014, arguing that, pursuant to Article 7(3)(c) of Directive 2004/38, he had the right to reside in Ireland as a worker for the period of six months after the end of his employment in July 2014. That application was rejected on 31 March 2015 on the ground that, since Mr Tarola came to Ireland, he had not worked for more than a year and he did not have sufficient independent resources to support himself.

13. Mr Tarola thus submitted an application for judicial review against the decision of 31 March 2015 before the High Court (Ireland). That application was refused on the ground that he did not satisfy the conditions laid down in Article 6(2)(c)(iii) of the 2006 Regulations. More specifically, the High Court held that Mr Tarola could not be regarded as a 'worker' and thus as habitually resident in Ireland and consequently could not claim social assistance in that capacity. The Court held that that provision applied only to persons who have been on fixed-term employment contracts of less than a year. It also held that the period of work completed by Mr Tarola from 8 July to 22 July 2014 could not be regarded as a fixed-term contract of employment within the meaning of that provision and that his entitlement to jobseeker's allowance was governed by Article 6(2)(c)(ii) of the 2006 Regulations. Accordingly, it found that, as Mr Tarola had not established that he had been in continuous employment for one year prior to applying for social security assistance, the Minister was entitled to refuse that application.

14. Considering that the case in the main proceedings raised the question of how Article 7(3)(c) of Directive 2004/38 should be interpreted, in particular in the light of the objectives pursued by that directive, the Court of Appeal (Ireland), before which Mr Tarola brought an appeal, decided, by decision of 2 August 2017, lodged at the Court Registry on 9 August 2017, to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where a citizen of another EU Member State, after his first 12 months of exercising his right of free movement, arrives in the host [Member] State and works (otherwise than on a fixed-term contract) for a two week period for which he is remunerated and thereafter becomes involuntarily unemployed, does that citizen thereby retain the status of a worker for no less than a further six months for the purposes of Article 7(3)(c) and Article 7(1)(a) of Directive [2004/38], such that it would entitle him to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a resident citizen of the host State?'

15. Mr Tarola, the Irish, Czech and French Governments and the European Commission submitted written observations.

16. Oral observations from Mr Tarola, the Irish, Danish and German Governments and the Commission were also heard at the hearing on 6 September 2018.

IV. Analysis

17. The question referred for a preliminary ruling asks, in essence, whether Article 7(1)(a) and (3)(c) of Directive 2004/38 must be interpreted as meaning that a national of a Member State who has been employed in another Member State for a period of two weeks, otherwise than as a fixed-term worker, and who thereafter becomes involuntarily unemployed, retains the status of worker within the meaning of those provisions.

18. It should be pointed out at the outset that my analysis will not seek to establish Mr Tarola's status as a worker, but whether or not he retains the status of worker within the meaning of Article 7(1)(a) and (3)(c) of Directive 2004/38. It is for the referring court alone to determine whether the applicant in the main proceedings has the status of worker.[3] Moreover, contrary to what may be inferred from the arguments put forward by the Irish Government, the question referred to the Court does not concern that issue.[4] After recalling the Court's case-law, according to which the concept of 'worker',[5] within the meaning of Article 45 TFEU, in so far as it determines the scope of a fundamental freedom provided for in the FEU Treaty, must be interpreted broadly,[6] the referring court is of the view that a person who has been employed for a two-week period and is genuinely remunerated for that work is still a 'worker' for the purposes of EU law.[7] It is apparent from the order for reference that, after assessing the reality of the situation, the referring court found that, in the light of Mr Tarola's employment,[8] he must be regarded as a worker for the purposes of EU law.

19. I will therefore limit my analysis to the only question posed by the Court of Appeal by which it asks whether, in view of the objectives pursued by the EU legislature,[9] Mr Tarola retains the status of worker within the meaning of Article 7(3)(c) of Directive 2004/38.

3 It should be borne in mind that the national court alone has jurisdiction to find and assess the facts in the case before it. For a recent illustration of that settled case-law, see judgment of 8 June 2016, *Hünnebeck* (C-479/14, EU:C:2016:412, paragraph 36). In particular, so far as concerns the status of worker, the Court has held that '[t]he national court alone is responsible for factual assessments of this kind', see judgment of 4 June 2009, *Vatsouras and Koupatantze* (C-22/08 and C-23/08, EU:C:2009:344, paragraph 31).

4 It should be observed, furthermore, that the question referred to the Court does not concern the entitlement to jobseeker's allowance.

5 Since the judgment of 19 March 1964, *Unger* (75/63, EU:C:1964:19), the Court has developed an autonomous definition of the concept of 'worker' within the meaning of Article 45 TFEU specific to EU law.

6 Judgments of 23 March 1982, *Levin* (53/81, EU:C:1982:105, paragraph 13), and of 3 July 1986, *Lawrie-Blum* (66/85, EU:C:1986:284, paragraph 16). See also judgment of 19 June 2014, *Saint Prix* (C-507/12, EU:C:2014:2007, paragraph 33 and the case-law cited). I would point out, in that regard, that, in accordance with settled case-law, the concept of 'worker' within the meaning of Article 45 TFEU has an autonomous meaning specific to EU law and *must not be interpreted narrowly*. See judgments of 26 February 1992, *Bernini* (C-3/90, EU:C:1992:89, paragraph 14); of 8 June 1999, *Meeusen* (C-337/97, EU:C:1999:284, paragraph 13); of 6 November 2003, *Ninni-Orasche* (C-413/01, EU:C:2003:600, paragraph 23); of 17 July 2008, *Raccanelli* (C-94/07, EU:C:2008:425, paragraph 33); of 21 February 2013, *N.* (C-46/12, EU:C:2013:97, paragraph 39); and of 1 October 2015, *O* (C-432/14, EU:C:2015:643, paragraph 22).

7 The Court, after having pointed out that 'any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary', must be regarded as a worker and that 'the essential feature of an employment relationship is, according to [its] case-law, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration', also held that the fact that employment is of short duration cannot, in itself, exclude that employment from the scope of Article 45 TFEU. See judgment of 4 June 2009, *Vatsouras and Koupatantze* (C-22/08 and C-23/08, EU:C:2009:344, paragraphs 26 and 29 and the case-law cited). See, also, judgment of 1 October 2015, *O* (C-432/14, EU:C:2015:643, paragraphs 23 to 27 and the case-law cited).

8 The referring court states that Mr Tarola worked 'otherwise than as a fixed-term worker'. In that regard, it is apparent from the oral observations presented by the applicant in the main proceedings at the hearing, on the one hand, that he worked as a 'casual labourer' in the construction sector and, on the other, that, in so far as it is linked to circumstances related to the evolution of the construction labour market, the duration of a contract for occasional employment is not set in advance. In addition, the Irish Government itself stated, in response to a question posed at the hearing, that a casual labourer 'is a part-time worker who works for a period of less than 13s weeks and whose work is not regular'. According to the Irish Government, a casual labourer may be regarded as having the status of worker within the meaning of Irish law. So far as concerns a contract for occasional employment, it should be borne in mind that the Court has already held that 'a worker employed under a [contract for occasional employment] is not precluded by reason of his conditions of employment from being regarded as a worker within the meaning of Article 48 of the EEC Treaty [now Article 45 TFEU]'. Judgment of 26 February 1992, *Raulin* (C-357/89, EU:C:1992:87, paragraph 11).

9 The referring court refers to striking the right balance between the main objective of safeguarding the free movement of workers and to that of ensuring that an unreasonable burden is not placed on the social security systems of the host Member State. See recitals 1 to 4 and 10 of Directive 2004/38. See, also, footnote 26 of this Opinion.

20. First of all, it should be noted that the French and Czech Governments and the Commission, like Mr Tarola, consider that his position falls within the scope of Article 7(3)(c) of Directive 2004/38. That view is shared by the Danish and German Governments in their oral observations, whereas the Irish Government puts forward a different view in its written observations. It claimed that Article 7(3)(c) of Directive 2004/38 does not apply to the applicant in the main proceedings, in so far as he has not been employed under a fixed-term contract.

21. It should be pointed out that each of the interveners which submitted written and oral observations, including the Irish Government,[10] put forward a different interpretation of Article 7(3)(c) of Directive 2004/38. Those different positions taken reflect the need to clarify the interpretation to be given to that provision.

A. Interpretation of Article 7(3)(c) of Directive 2004/38

22. It follows from the Court's settled case-law that, in interpreting a provision of EU law, it is necessary to consider not only the wording of the provision but also the context in which it occurs and the objectives pursued by the rules of which it is part.[11] I will therefore undertake a literal, teleological and schematic interpretation of Article 7(3)(c) of Directive 2004/38.

1. Literal reading of Article 7(3)(c) of Directive 2004/38

23. In accordance with Article 7(1) of Directive 2004/38, all Union citizens have the right of residence on the territory of another Member State for a period of longer than three months. Under Article 7(3)(c) of that directive, a Union citizen who is no longer a worker or self-employed person retains the status of worker or self-employed person — and, consequently, the right of residence on the territory of a Member State beyond three months — '[if] he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months and has registered as a jobseeker with the relevant employment office'. Pursuant to that provision, in that case, 'the status of worker shall be retained for no less than six months'.

24. It is apparent from a first reading of that provision that the wording alone is insufficient from a grammatical or syntactical point of view. Nevertheless, the choice made by the EU legislature to use the disjunctive coordinating conjunction 'or' implies that the second situation is different to the first. Consequently, that provision covers two different situations. The interpretation of the first does not seem to pose a problem, in so far as it covers the situation of a Union citizen who is no longer a worker after completing a fixed-term employment contract of less than a year and finds he is in duly recorded involuntary unemployment at the end of that contract.

25. By contrast, the wording of the second situation raises doubts as to its interpretation. More specifically, that wording does not clearly indicate whether the expression 'during the first 12 months' refers to the length of the initial period of employment of the EU citizen in the host Member State or the type of employment contract that he has concluded with that Member State (fixed-term, permanent or other type of contract).

10 The Irish Government put forward that view in the alternative.

11 See, in particular, judgments of 17 November 1983, *Merck* (292/82, EU:C:1983:335, paragraph 12); of 22 December 2010, *Feltgen and Bacino Charter Company* (C-116/10, EU:C:2010:824, paragraph 12); and of 13 September 2017, *Khir Amayry* (C-60/16, EU:C:2017:675, paragraph 29).

26. On the basis of a purely literal reading of Article 7(3)(c) of Directive 2004/38, the referring court's interpretation seems a priori to be reasonable. Accordingly, that court considers that the first situation set out in that provision ('he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year') refers to the termination of fixed-term employment contracts of less than a year, whereas the second ('after having become involuntarily unemployed during the first 12 months ...') refers to the termination of employment contracts of more than a year. Indeed, it is perfectly logical that if the first situation refers to a fixed-term employment contact of less than a year, the phrase 'during the first 12 months' can only refer to professional activity pursued for more than a year.

27. However, in the first place, it should be noted that the phrase 'during the first 12 months' of the second situation does not refer to a specific type of employment contract or to a specific duration of the contract. That phrase merely refers to the possibility that a citizen becomes unemployed during the first 12 months of employment, that is to say the period between the beginning of the employment relationship and the beginning of the period of involuntary unemployment irrespective of, on the one hand, the type of employment contract or its duration (fixed-term or permanent contract, full time or part time contract, or other form of contract) [12] and, on the other, the nature of the activity pursued (as a worker or self-employed person). [13]

28. Consequently, it follows, in principle, from a literal interpretation of the French-language version of Article 7(3)(c) of Directive 2004/38 that the second situation provided for in that provision refers only to the duration of the period between the beginning of the employment relationship and the beginning of the period of involuntary unemployment, the type of employment contract or the nature of the activity pursued by the EU citizen during the first 12 months of employment having no bearing on that interpretation. The comparison of the different language versions of that provision does not lead to a different conclusion. [14]

29. So far as concerns the expression 'during the first 12 months', it should be noted that none of the language versions examined is a shining example of clarity. That expression seems to have been drafted in the same terms, in particular, in the following language versions: German ('der ersten zwölf Monate'); English ('during the first 12 months'); Italian ('durante i primi dodici mesi'); Polish ('przez pierwsze dwanaście miesięc'); Estonian ('esimese kaheteistkümne kuu'); Portuguese ('durante os primeiros 12 meses'); Spanish ('durante los primeros doce meses'); Romanian ('în timpul primelor douăsprezece luni'); and Lithuanian ('per pirmuosius dvylika mėnesių').

30. However, the interpretation proposed above does not, by itself, answer the question referred. It is therefore necessary to interpret the second situation provided for in Article 7(3)(c) of Directive 2004/38 in the light of the context in which it occurs and the purpose and general scheme of the directive.

12 See footnote 8 of this Opinion.

13 In that regard, it must be borne in mind that, since Article 7(1) of Directive 2004/38 draws no distinction between economically active EU citizens who have engaged in paid employment and those who have pursued an activity as a self-employed person, in the host Member State, it should be observed that the second situation provided for in Article 7(3)(c) of Directive 2004/38 and, in particular, the expression 'during the first 12 months', covers both the situation of persons who have ceased to work as employed persons and also those who have ceased to work as self-employed persons. See judgments of 19 June 2014, *Saint Prix* (C-507/12, EU:C:2014:2007, paragraph 27), and of 20 December 2017, *Gusa* (C-442/16, EU:C:2017:1004, paragraphs 27, 37 and 38). See, also, Opinion of Advocate General Wathelet in *Gusa* (C-442/16, EU:C:2017:607, points 62 to 64).

14 As the Commission rightly observes and contrary to the Irish Government's submissions, the phrase 'during the first 12 months' does not refer to the first year of the exercise of the right of free movement but to the period between the beginning of the employment relations and the beginning of the period of involuntary unemployment.

2. Contextual reading of Article 7(3)(c) of Directive 2004/38

31. Article 7(3)(c) of Directive 2004/38 must be interpreted in the light of the provisions surrounding it in that directive.

32. In that regard, it should be pointed out that the provisions of Article 7 of Directive 2004/38 set out a number of situations in which EU citizens have the right of residence on the territory of another Member State for a period of longer than three months. More specifically, Article 7(3) of that directive lists non-exhaustively [15] the specific circumstances in which, for the purposes of Article 7(1)(a), a Union citizen who is no longer a worker or self-employed person retains the status of worker or self-employed person. [16] Those situations concern certain temporary changes in professional circumstances, [17] due to the temporary inability to work as the result of an illness or accident (subparagraph (a) of that provision), involuntary unemployment (subparagraphs (b) and (c)) or the worker embarks on vocational training (subparagraph (d)).

33. By Article 7(3) of Directive 2004/38, the EU legislature sought to extend the scope of the right of residence of EU citizens who, for the reasons set out therein, are temporarily unable to work. It is apparent from a combined reading of situations (a) to (d) set out in that provision that a scale was introduced according to the reason for the citizen's inability to work (temporary inability to work as the result of an illness or accident, involuntary unemployment or vocational training) and also the initial duration of his professional activity in the host Member State (more or less than a year).

34. That scale may be expressed as follows. The citizen retains the status of worker *without any time limit* only if he is temporarily unable to work as the result of an illness or accident (subparagraph (a) of that provision), if he has embarked on vocational training (subparagraph (d)) or if he has been a worker or self-employed person in the host Member State for more than a year before becoming involuntarily unemployed (subparagraph (b)). By contrast, the citizen who finds himself in involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months (of employment) retains the status of worker *with a possible time limit*, that is to say 'for no less than six months' (subparagraph (c)).

35. In particular, so far as concerns the length of time during which the EU citizen who becomes involuntarily unemployed retains the status of worker, the *ratio legis* of Article 7(3)(b) and (c) of Directive 2004/38 is to make two distinctions. The *first distinction* is clearly made in accordance with the initial duration of activity pursued by the citizen in the host Member State. Accordingly, while Article 7(3)(b) refers to the *initial duration of more than one year*, irrespective of the nature of the activity pursued or the type of employment contract that the citizen has concluded, Article 7(3)(c) refers to the *initial duration of less than a year*, whilst establishing a *second distinction* according to whether or not the EU citizen can *predict the precise duration* of his contract or activity.

36. Consequently, the first scenario provided for in Article 7(3)(c) of Directive 2004/38 is intended to cover the situation of an EU citizen who worked for a fixed period of less than a year and who is in duly recorded involuntary unemployment after completing his employment contract. It seems clear to me that, in so far as that situation concerns a fixed-term employment contract, it may be argued that the citizen in question knew and could therefore have foreseen the end of the contract, the duration of which was less than a year.

15 Judgment of 19 June 2014, *Saint Prix* (C-507/12, EU:C:2014:2007, paragraph 38).

16 Judgment of 19 June 2014, *Saint Prix* (C-507/12, EU:C:2014:2007, paragraph 27).

17 It should be borne in mind that the Court has already held that the possibility, for an EU citizen who has temporarily ceased to pursue an activity as an employed or self-employed person, of retaining his status of worker on the basis of Article 7(3) of Directive 2004/38, as well as the corresponding right of residence under Article 7(1) of the directive, is based on the assumption that the citizen is available and able to re-enter the labour market of the host Member State within a reasonable period. See judgment of 13 September 2018, *Prefeta* (C-618/16, EU:C:2018:719, paragraph 37 and the case-law cited).

37. The second scenario concerns the situation of an EU citizen who, contrary to his expectations and irrespective of the nature of the activity pursued (as a worker or self-employed person) or the type of contract under which he is employed (fixed-term, permanent or other form of contract), becomes involuntarily unemployed during the first 12 months of employment. In that case, either the citizen could not foresee the exact length of employment or duration of the activity pursued, or he knew the duration but it was expected to be for more than one year. It is irrelevant whether the EU citizen worked 15 days, 3 months or 11 months, as a self-employed person or employed under a fixed-term contract, permanent contract or other form of contract, such as a contract for casual labour. What matters in the present case is that, contrary to his expectations, the EU citizen becomes involuntarily unemployed during the first 12 months of employment. [18]

38. That interpretation is supported by the scheme of Article 7 of Directive 2004/38, which, I would remind you, governs the right of residence of EU citizens on the territory of another Member State for more than three months in certain circumstances. [19] I take the view that those circumstances include the situations set out in Article 7(3)(c), namely that the EU citizen has worked in the host Member State under a fixed-term employment contract of less than a year before becoming involuntarily unemployed (first situation) or that he has become involuntarily unemployed during the first 12 months of employment as a worker or self-employed person without having been able to foresee the actual duration of his employment (second situation). In that case, under Directive 2004/38, the status of worker and, therefore, the right to reside in the host Member State is retained for no less than six months provided that he 'has registered as a jobseeker with the relevant employment office'.

39. Therefore, examined in its specific context, the second situation set out in Article 7(3)(c) of Directive 2004/38 must be interpreted as referring to a worker or self-employed person who becomes involuntarily unemployed during the first 12 months of employment.

40. That is the only interpretation capable of ensuring that the objectives pursued by Directive 2004/38 are met. [20]

3. Teleological reading of Article 7(3)(c) of Directive 2004/38

41. The foregoing conclusion is confirmed by an analysis of the objectives of Directive 2004/38 and, more specifically, of Article 7(3)(c) thereof.

42. It is apparent from recitals 1 to 4 of Directive 2004/38 that it aims, above all, to 'facilitate and strengthen the exercise of the primary and individual right to move and reside freely within the territory of the Member States that is conferred directly on Union citizens by the Treaty'. [21] It is apparent, in particular from recitals 3 and 4 of Directive 2004/38, that, 'with a view to strengthening

18 For example, if the citizen exercising his right to free movement signs a fixed-term employment contract for three years, he cannot foresee circumstances such as his dismissal or the bankruptcy of the company that employed him. In the case of a casual worker who has moved to the host Member State to work, it is not unreasonable to think that the purpose of such a move was to work for more than two weeks, especially if that citizen became involuntarily unemployed.

19 That interpretation is entirely consistent with the logic of Article 7 of Directive 2004/38. In order to extend their stay beyond three months in the host Member State, EU citizens must be 'workers or self-employed persons in the host Member State' (paragraph 1(a)), or have sufficient resources 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 (paragraph 1(b)), or be a student (paragraph 1(c)) or be family members accompanying or joining a Union citizen who satisfies the abovementioned conditions (paragraph 1(d)). The right of residence for more than three months extends (subject to the limitations laid down in paragraph 4) to family members who are not nationals of a Member State (paragraph 2) provided that the Union citizen satisfies one of those conditions.

20 I would point out that 'having regard to the context and objectives of Directive 2004/38, the provisions of that directive cannot be interpreted restrictively, and must not in any event be deprived of their effectiveness'. Judgments of 25 July 2008, *Metock and Others* (C-127/08, EU:C:2008:449, paragraph 84), and of 18 December 2014, *McCarthy and Others* (C-202/13, EU:C:2014:2450, paragraph 32).

21 Judgments of 25 July 2008, *Metock and Others* (C-127/08, EU:C:2008:449, paragraph 82); of 5 May 2011, *McCarthy* (C-434/09, EU:C:2011:277, paragraph 28); and of 19 September 2013, *Brey* (C-140/12, EU:C:2013:565, paragraph 71).

the fundamental and individual right of all Union citizens to move and reside freely within the territory of the Member States and to facilitating the exercise of that right, the aim of the directive is to remedy the sector-by-sector, piecemeal approach which characterised the instruments of EU law which preceded that directive and which dealt separately, in particular, with workers and self-employed persons [who have ceased their occupational activity], by providing a single legislative act codifying and revising those instruments'.[22] More specifically, in that context, the Court has held that the objective of Article 7(3) of Directive 2004/38 is 'to safeguard, by the retention of the status of worker, the right of residence of persons who have ceased their occupational activity because of an absence of work due to *circumstances beyond their control*'.[23]

43. In addition, the Court has held that the subject of Directive 2004/38 concerns, as is apparent from Article 1(a), the conditions governing the exercise of the right of citizens of the Union to move and reside freely within the territory of the Member States. Those include, for stays longer than three months, the conditions set out in Article 7 of that directive.[24] In that regard, it should be borne in mind that it is apparent from recital 10 of that directive that 'those conditions are intended, inter alia, to prevent such persons becoming an unreasonable burden on the social assistance system of the host Member State'.[25]

44. In the overall context of Directive 2004/38, those objectives, which sit within a hierarchy,[26] are moderated by a gradual system governing the right of residence in the host Member State. By reproducing, in essence, the stages and conditions set out in the various instruments of EU law and case-law preceding the directive, that system culminates in the right of permanent residence.[27] Accordingly, between the right of residence of three months, on the one hand, and the right of permanent residence, on the other, the right of residence for more than three months is subject to conditions set out in Article 7(1) of Directive 2004/38. In addition, under Article 14(2) of that directive, an EU citizen retains that right only if he satisfies the conditions set out in Article 7 of that directive which, as pointed out above, seek to ensure that he does not become an unreasonable burden on the social assistance system of the host Member State.

45. I am convinced that my interpretation of Article 7(3)(c) of Directive 2004/38 fits perfectly not only within the framework of the gradual system provided by it to govern the right of residence in the host Member State, but also within the specific framework of the *gradual system as regards the retention of the status of worker* which seeks to safeguard the right of residence and access to social assistance.[28] By establishing that system, Directive 2004/38 itself takes into consideration various factors characterising the individual situation of each applicant for social assistance and, in particular, the duration of the exercise of any economic activity,[29] and also, in the context of the provision analysed, the *foreseeable nature of such a duration*.[30] As the Court has held, that gradual system enables the citizens concerned to know, without any ambiguity, what their rights and obligations are and the guarantees they enjoy, while complying with the principle of proportionality and avoiding excessive costs being placed on the social security system of the host Member State.[31]

22 Judgment of 20 December 2017, *Gusa* (C-442/16, EU:C:2017:1004, paragraph 40 and the case-law cited).

23 The emphasis is mine. Judgment of 20 December 2017, *Gusa* (C-442/16, EU:C:2017:1004, paragraph 42 and the case-law cited).

24 See, in particular, judgment of 5 May 2011, *McCarthy* (C-434/09, EU:C:2011:277, paragraph 33).

25 Judgments of 21 December 2011, *Ziolkowski and Szeja* (C-424/10 and C-425/10, EU:C:2011:866, paragraph 40); of 4 October 2012, *Commission* v *Austria* (C-75/11, EU:C:2012:605, paragraph 60); and of 19 September 2013, *Brey* (C-140/12, EU:C:2013:565, paragraph 54).

26 See the Opinion of Advocate General Wathelet in *Gusa* (C-442/16, EU:C:2017:607, points 51 and 52). 'That second objective [set out in recital 10] exists only by reason of the first: since the directive aims to facilitate the exercise of the right of residence, the Member States felt it necessary to ensure that the financial burden of that freedom be kept under control'.

27 Judgment of 21 December 2011, *Ziolkowski and Szeja* (C-424/10 and C-425/10, EU:C:2011:866, paragraph 38). See Articles 6 and 14(1) of Directive 2004/38 on the right of residence for up to three months, Articles 7 and 14(2) of that directive on the right of residence for more than three months and Article 16 of that directive on the right of permanent residence.

28 Judgment of 15 September 2015, *Alimanovic* (C-67/14, EU:C:2015:597, paragraph 60).

29 Judgment of 15 September 2015, *Alimanovic* (C-67/14, EU:C:2015:597, paragraph 60).

30 See points 37 and 38 of this Opinion.

31 See, to that effect, judgment of 15 September 2015, *Alimanovic* (C-67/14, EU:C:2015:597, paragraph 61).

46. Interpreting the second situation provided for in Article 7(3)(c) as referring only to persons employed under a fixed-term employment contract, excluding those employed under other types of contract or those who have pursued an activity as a self-employed person, would run counter to the objectives of Directive 2004/38. [32] Moreover, an interpretation which distinguishes between workers according to the type of employment contract concluded or the nature of the activity pursued would amount to an unjustified difference in treatment. Such a difference in treatment would result in 'reserving' the first objective of the directive, namely to facilitate and strengthen the exercise of the primary and individual right to move and reside freely within the territory of the Member States, to workers who are in a more stable position, in so far as they have concluded fixed-term or permanent employment contracts, and excluding other categories of workers who have concluded more 'flexible' contracts (in particular, part time or casual contracts) and who are therefore in a clearly vulnerable position. [33]

47. In the same way that a person employed under a fixed-term contract may lose his job following, inter alia, his dismissal, a worker employed under another type of contract [34] may also lose his job and a person who has been self-employed may find himself obliged to stop working. In such circumstances, that person might thus be in a vulnerable position comparable to that of a person employed under a fixed-term contract who has been dismissed. [35]

48. In those circumstances, is it justified that that person does not enjoy the same protection with regard to the retention of the right of residence as someone employed under a fixed-term contract who has ceased his occupational activity?

49. I do not think so. In both cases, the person becomes involuntarily unemployed due to a lack of work, for reasons beyond his control, after having been employed for less than a year as a worker or self-employed person and should, therefore, enjoy the protection conferred by Article 7(3)(c) of Directive 2004/38 if he has registered as a jobseeker with the relevant employment office.

50. Moreover, in my opinion, there is no objective justification for a difference in treatment which would result in a right of residence not being granted to a person who has pursued an occupational activity as a worker or self-employed person for less than a year in the host Member State and has therefore contributed to the social and tax systems of that Member State, and a right of residence being granted to a jobseeker who has never pursued an economic activity in that Member State or contributed to its social and tax systems but who meets the conditions set out in Article 14(4)(b) of Directive 2004/38. [36]

32 See recitals 3 and 4 of Directive 2004/38.

33 See, to that effect, O'Brien, Ch., 'Civis Capitalism Sum: Class as the New Guiding Principle of EU Free Movement Rights', *Common Market Law Review*, vol. 53, 2016, pp. 937-978, and in particular p. 975: 'Equal treatment rights are being reserved for those in the privileged position of work with regular hours and pay, while retention of worker status is harder for those on casual contracts, and for those who struggle to produce evidence of the "genuineness" of their prior work'; Nic Shuibhne, N., 'Limits Rising, Duties Ascending: The Changing Legal Shape of Union Citizenship', *Common Market Law Review*, vol. 52, 2015, pp. 889-938, in particular p. 926 et seq.: 'Union citizenship looks less like a status rooted in rights and more like an increasingly qualified privilege — with mutable channels of admission, especially where restrictions are not provided or laid down.'.

34 Such as a permanent or casual employment contract.

35 With regard, in particular, to a person no longer working in a self-employed capacity, see, by analogy, judgment of 20 December 2017, *Gusa* (C-442/16, EU:C:2017:1004, paragraph 43).

36 '... In this case, the Union citizens … may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged'. With regard to the discretion enjoyed by the host Member State not to confer entitlement to social assistance in that case, see Article 24(2) of Directive 2004/38.

4. Interpretation of Article 7(3)(c) of Directive 2004/38 in the light of its origin

51. The origin of that provision allows me to confirm that interpretation. Article 8(7)(c) of the original Commission proposal [37] and Article 9(3)(c) of the European Parliament legislative resolution [38] referred only to the situation in which 'he/she [was] in involuntary unemployment after completing a fixed-term employment contract of less than a year'. [39] The Parliament merely moved the content of Article 8(7)(c) of the original Commission proposal to Article 9(3)(c) of the European Parliament legislative resolution. That amendment was taken up by the Commission in its amended proposal [40] and, subsequently, by the Council of the European Union in its common position. [41] However, as set out in the Explanatory Memorandum, 'the wording of point (c) [was] amended by the Council, in order to make it clear that in this particular situation the status of worker shall be retained for no less than six months'. It should be noted that another amendment was made to that provision by adding the phrase 'or after having become involuntarily unemployed during the first 12 months'.

52. I take the view that the insertion of that phrase during the preparatory work on Directive 2004/38 confirms the intention of the EU legislature to extend the scope of Article 7(3)(c) of that directive, which was limited to fixed-term contracts, to other types of contracts.

B. The host Member State is not entitled to make the retention of worker status subject to working in an employed capacity for a minimum period of time

53. The Danish, German and French Governments claim that, in the light of recital 10 of Directive 2004/38, there are situations in which a Member State is entitled to consider that a person has not worked in an employed capacity for a sufficient period of time to rely on Article 7(3)(c) of that directive. Consequently, they consider that national authorities should be able to determine the conditions for retaining the status of worker.

54. It should be noted that, as the Commission has rightly claimed, Directive 2004/38 provides sufficient guarantees for avoiding excessive costs being placed on the social security system of host Member States resulting from unreasonable applications for social benefits. [42]

55. I would point out, in the first place, that, in accordance with Article 24(1) of that directive, 'all Union citizens residing on the basis of [that directive] in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State'. Consequently, where national law excludes persons who have worked in an employed or self-employed capacity for a short period of time from the entitlement to social benefits, those exclusions apply in the same way to mobile workers from other Member States.

37 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) 257 final (OJ 2001 C 270 E, p. 150)). Article 8 concerned the administrative formalities for citizens.

38 European Parliament legislative resolution on 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) 257 — C5-0336/2001 — 2001/0111(COD) (OJ 2004 C 43 E p. 42)).

39 Article 9 concerned the conditions governing the right of residence for a period longer than six months.

40 See Article 7(2a) (amendment 30). Amended proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (presented by the Commission pursuant to Article 250(2) of the EC Treaty) COM/2003/0199 final — COD 2001/0111.

41 Common Position (EC) No 6/2004 of 5 December 2003 adopted by the Council … with a view to adopting Directive 2004/[38]/EC of the European Parliament and of the Council 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 C 54 E, p. 12).

42 In that context, the Court has held that '[that directive], establishing a gradual system as regards the retention of the status of "worker" which seeks to safeguard the right of residence and access to social assistance, itself takes into consideration various factors characterising the individual situation of each applicant for social assistance and, in particular, the duration of the exercise of any economic activity'. Judgment of 15 September 2015, *Alimanovic* (C-67/14, EU:C:2015:597, paragraph 60).

56. In the second place, Article 7(3)(c) of Directive 2004/38 limits the retention of the status of worker and, therefore, enjoyment of the right to equal treatment to a period of 'no less than six months'. Consequently, the retention of the status of worker does not necessarily confer entitlement to jobseeker's allowance. The right to equal treatment implies only that the worker must enjoy the same rights as those guaranteed to nationals of the host Member State.

57. In the third place, Article 7(3)(c) of Directive 2004/38 provides that, in order for a worker or self-employed person to retain the status of worker, he must have become involuntarily unemployed and be registered as a jobseeker with the relevant employment office. As the Commission observed, the purpose of that requirement is to ensure that persons do not artificially place themselves in a position to enjoy the right to equal treatment. In that regard, it should be noted that, in the present case, there is nothing in the order for reference to indicate that Mr Tarola unlawfully fell within the scope of Article 7(3) of Directive 2004/38.[43]

58. In the fourth and last place, it is clear that Member States cannot make the retention of the status of worker subject to working in an employed capacity for a minimum period of time other than that provided for in Article 7(3)(c) of Directive 2004/38. To take a different view would be such as to introduce an additional requirement not provided for by the EU legislature.

59. In my view, it is clear from points 22 to 52 of this Opinion that the second situation provided for in Article 7(3)(c) of Directive 2004/38 applies to a worker who has become involuntarily unemployed during the first 12 months of employment, irrespective of the nature of the activity pursued (as a worker or self-employed person) or the type of contract under which he is employed (fixed-term, permanent or other form of contract).

V. Conclusion

60. In the light of all the foregoing considerations, I propose that the Court should answer the question referred for a preliminary ruling by the Court of Appeal (Ireland) as follows:

Article 7(1)(a) and (3)(c) of Directive 2004/38 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 national of a Member State who has been employed in another Member State for a period of two weeks, otherwise than as a fixed-term worker, and who then becomes involuntarily unemployed, retains the status of worker within the meaning of those provisions.

43 In that regard, so far as concerns the concept of abuse of rights, see my Opinion in *McCarthy and Others* (C-202/13, EU:C:2014:345, points 108 to 115).