JUDGMENT OF THE COURT (Third Chamber)

7 October 2010 *

In Case C-162/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom), by decision of 10 March 2009, received at the Court on 8 May 2009, in the proceedings

Secretary of State for Work and Pensions

v

Taous Lassal,

intervener:

Child Poverty Action Group,

* Language of the case: English.

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta (Rapporteur), G. Arestis, J. Malenovský and T. von Danwitz, Judges,

Advocate General: V. Trstenjak,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 17 March 2010,

after considering the observations submitted on behalf of:

— Child Poverty Action Group, by S. Clarke, Solicitor, R. Drabble, QC, and R. Turney, Barrister,

— the United Kingdom Government, by L. Seeboruth and S. Ossowski, acting as Agents, and by D. Beard, Barrister,

— the Belgian Government, by L. Van den Broeck, acting as Agent,

— the European Commission, by D. Maidani and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 16 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, OJ 2005 L 197, p. 34, and OJ 2007 L 204, p. 28).

2 The reference was made in the course of proceedings between Ms Lassal and the Secretary of State for Work and Pensions ('the Secretary of State'). Child Poverty Action Group ('CPAG') has intervened in the dispute in the main proceedings in support of Ms Lassal.

Legal context

European Union law

3 Article 45 of the Charter of Fundamental Rights of the European Union, entitled 'Freedom of movement and of residence' provides:

'1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.'

4 According to recitals 1 to 3 and 17 to 19 in the preamble to Directive 2004/38:

'(1) Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect.

(2) The free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty.

(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.

...

(17) Enjoyment of permanent residence by Union citizens who have chosen to settle long term in the host Member State would strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Union. A right of permanent residence should therefore be laid down for all Union citizens and their family members who have resided in the host Member State in compliance with the conditions laid down in this Directive during a continuous period of five years without becoming subject to an expulsion measure.

(18) In order to be a genuine vehicle for integration into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once obtained, should not be subject to any conditions.

(19) Certain advantages specific to Union citizens who are workers or self-employed persons and to their family members, which may allow these persons to acquire a right of permanent residence before they have resided five years in the host Member State, should be maintained, as these constitute acquired rights, conferred by Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State [OJ, English Special Edition 1970(II) p. 402] and Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity (OJ 1975 L 14, p. 10).'

5 Article 6 of Directive 2004/38 provides:

'1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.'

6 Article 7(1) to (3) of Directive 2004/38 states:

'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).

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:

…'

7 Under Chapter IV, concerning the 'Right of permanent residence', Article 16 of Directive 2004/38, entitled 'General rule for Union citizens and their family members', provides:

'1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.

2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.

3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.'

8 By derogation from Article 16 of Directive 2004/38, Article 17 thereof provides for the grant of the right of permanent residence before completion of a continuous period of five years' residence to workers who have stopped working in the host Member State and to their family members.

9 Under Article 38 of Directive 2004/38:

'1. Articles 10 and 11 of Regulation (EEC) No 1612/68 shall be repealed with effect from 30 April 2006.

2. 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 shall be repealed with effect from 30 April 2006.

3. References made to the repealed provisions and Directives shall be construed as being made to this Directive.'

10 In accordance with Article 40 of Directive 2004/38 the Member States were to transpose that directive before 30 April 2006.

National law

The Social Security Contributions and Benefits Act 1992 and the Income Support (General) Regulations 1987

11 The Social Security Contributions and Benefits Act 1992 and the Income Support (General) Regulations 1987 constitute the legislation applicable to income support.

12 Income support is a means-tested benefit for various groups of persons. It is subject, in particular, to the condition that the income of the person concerned should not exceed the 'applicable amount' which may be prescribed as nil, which means in practice that in that case no benefit is paid.

13 The applicable amount prescribed for 'a person from abroad' is nil, that person being defined as 'a claimant who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland'. For the purposes of income support, no claimant is to be treated as habitually resident in the United Kingdom unless he has a 'right to reside' there.

14 The 'right to reside' for the purposes of that benefit is not expressly defined.

15 However, it is common ground that the right of permanent residence provided for in Article 16 of Directive 2004/38 constitutes a right to reside for the purposes of income support.

The Immigration (European Economic Area) Regulations 2006

16 The Immigration (European Economic Area) Regulations 2006 ('the 2006 Regulations') entered into force on 30 April 2006 and are intended to implement the provisions of Directive 2004/38 in the United Kingdom.

17 Under the heading 'Permanent right of residence', Regulation 15 of the 2006 Regulations transposes Article 16 of Directive 2004/38.

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

18 Ms Lassal, a French national, entered the United Kingdom in January 1999 in order to look for work. From September 1999 to February 2005, while she resided in that Member State, Ms Lassal was working or seeking work. According to the referring court, it is common ground between the parties to the main proceedings that Ms Lassal was a 'worker' for the purposes of European Union (EU) law from January 1999 to February 2005.

19 In February 2005 Ms Lassal left the United Kingdom to visit her mother in France, where she stayed for 10 months. In December 2005, she returned to the United Kingdom where she sought work. From January to November 2006 she received Job Seeker's Allowance. In November 2006 she applied for income support on the basis that she was pregnant. That application was refused on the ground that she had no right to reside in the United Kingdom.

20 Ms Lassal appealed to an Appeal Tribunal against the refusal of her claim. On 3 September 2007 the Appeal Tribunal allowed her appeal on the ground that, under Regulation 15 of the 2006 Regulations, she had a permanent right of residence.

21 The Secretary of State appealed against the Appeal Tribunal's decision to a Social Security Commissioner and then to the referring court.

22 It was in that context that the Court of Appeal (England and Wales) (Civil Division) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'In circumstances where … a citizen of the Union came to the United Kingdom in September 1999 as a worker and remained as a worker until February 2005 … the citizen of the Union then left the United Kingdom and returned to the Member State of which she is a national for a period of 10 months … the citizen of the Union of the Union returned to the United Kingdom in December 2005 and resided there continuously until November 2006, when she made a claim for social security assistance, is Article 16(1) of Directive 2004/38 … to be interpreted as entitling that citizen of the

Union to a right of permanent residence by virtue of the fact that she had been legally resident, in accordance with earlier Community law instruments conferring rights of residence on workers, for a continuous period of five years which ended prior to 30 April 2006 (the date by which Member States had to transpose the Directive)?'

The question referred for a preliminary ruling

23 Since the question referred is premised on certain facts, it must be split into two parts in order for the Court to give an appropriate answer.

24 Firstly, the referring court asks in substance whether, for the purposes of acquiring the right of permanent residence provided for in Article 16 of Directive 2004/38, continuous periods of five years' residence completed before 30 April 2006, the date for transposition of that directive, in accordance with earlier EU law instruments, must be taken into account.

25 If the answer to the first part of the question is in the affirmative, the referring court asks, secondly, whether temporary absences which occurred before 30 April 2006, after a continuous period of five years' legal residence, prevent a citizen of the Union such as Ms Lassal from acquiring a right of permanent residence within the meaning of Article 16(1) of Directive 2004/38.

Whether periods completed before the date of transposition of Directive 2004/38 in accordance with EU law instruments prior to that date may be taken into account for the purposes of acquiring the right of permanent residence provided for by Article 16 thereof

Observations submitted to the Court

26 Among the interested parties who have lodged written observations, in accordance with Article 23 of the Statute of the Court of Justice of the European Union, two positions of principle may be distinguished.

27 On one hand, the Belgian and United Kingdom Governments take the view that only periods of residence either ending on 30 April 2006 or thereafter, or which commence after 30 April 2006, should be taken into account. In support of such an interpretation, the United Kingdom Government relies essentially on the phrase 'in compliance with the conditions laid down in this Directive' in recital 17 in the preamble to Directive 2004/38 and its *travaux préparatoires*, while the Belgian Government relies, in particular, on the fact that that directive does not have retroactive effect and on the principle of legal certainty.

28 On the other hand, CPAG and the European Commission take the view that, even if the right of permanent residence was acquired only from 30 April 2006, continuous five-year periods completed in accordance with the EU law instruments pre-dating Directive 2004/38 and ending before that date should be taken into account for the purposes of Article 16 of that directive. Both CPAG and the Commission base their arguments in particular on the objective and *ratio legis* of that directive, which, they submit, require that Article 16 is applied in full to those residence periods.

The Court's reply

29 As a preliminary point, it must be observed that citizenship of the Union confers on each citizen a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and restrictions laid down by the Treaty on the functioning of the European Union and the measures adopted for their implementation, freedom of movement for persons being, moreover, one of the fundamental freedoms of the internal market, which was also reaffirmed in Article 45 of the Charter of Fundamental Rights of the European Union.

30 With regard to Directive 2004/38, the Court has already had occasion to point out that that directive aims to facilitate 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 and that it aims in particular to strengthen that right, so that Union citizens cannot derive less rights from that directive than from the instruments of secondary legislation which it amends or repeals (see Case C-127/08 *Metock and Others* [2008] ECR I-6241, paragraphs 82 and 59).

31 The Court has also observed 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 (see *Metock and Others*, paragraph 84).

32 As recital 17 in the preamble to Directive 2004/38 states, the right of permanent residence is a key element in promoting social cohesion and was provided for by that directive in order to strengthen the feeling of Union citizenship.

33 It is true that it is common ground that the acquisition of the right of permanent residence on the ground of legal residence for a continuous period of five years in the host Member State, provided for in Article 16(1) of Directive 2004/38, did not appear in the EU law instruments adopted for the application of Article 18 EC prior to that directive.

34 However, such a finding cannot lead to the conclusion that only continuous periods of five years' legal residence either ending on 30 April 2006 or thereafter, or commencing after 30 April 2006 are to be taken into account for the purposes of acquisition of the right of permanent residence provided for in Article 16 of Directive 2004/38.

35 In the first place, an interpretation to the effect that only continuous periods of five years' legal residence commencing after 30 April 2006 should be taken into account for the purposes of the acquisition of a right of permanent residence would mean that such a right could be granted only from 30 April 2011. Such an interpretation would amount to depriving the residence completed by citizens of the Union in accordance with EU law instruments pre-dating 30 April 2006 of any effect for the purposes of the acquisition of that right of permanent residence. It should be stated in that connection that prior to the adoption of Directive 2004/38 EU law already provided in certain specific cases for a right of permanent residence, which was included in Article 17 thereof.

36 It must be stated that such a result is contrary to the purpose of Directive 2004/38, set out in paragraphs 30 to 32 of this judgment, and would deprive it of its effectiveness.

37 In the second place, an interpretation to the effect that only continuous periods of five years' legal residence ending on 30 April 2006 or thereafter should be taken into account for the purposes of acquisition of the right of permanent residence provided

for in Article 16 of Directive 2004/38 is also contrary to the purpose and effectiveness of that directive. The EU legislature made the acquisition of the right of permanent residence pursuant to Article 16(1) of Directive 2004/38 subject to the integration of the citizen of the Union in the host Member State. As the Advocate General pointed out, in point 80 of her Opinion, it would be incompatible with the integration-based reasoning behind Article 16 of that directive to consider that the required degree of integration in the host Member State depended on whether the continuous period of five years' residence ended before or after 30 April 2006.

38 Furthermore, it should be noted that, in so far as the right of permanent residence provided for in Article 16 of Directive 2004/38 may only be acquired from 30 April 2006, the taking into account of periods of residence completed before that date does not give retroactive effect to Article 16 of Directive 2004/38, but simply gives present effect to situations which arose before the date of transposition of that directive.

39 It should be borne in mind in that regard that the provisions on citizenship of the Union are applicable as soon as they enter into force and therefore they must be applied to the present effects of situations arising previously (see Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 25 and the case-law cited).

40 Consequently, for the purposes of the acquisition of the right of permanent residence provided for in Article 16 of Directive 2004/38, continuous periods of five years' residence completed before the date of transposition of that directive, namely 30 April 2006, in accordance with the earlier EU law instruments, must be taken into account.

The effect of temporary absences of less than two consecutive years, before 30 April 2006 and after a continuous period of five years' legal residence, on the right of permanent residence pursuant to Article 16(1) of Directive 2004/38

Observations submitted to the Court

41 As is clear from paragraphs 27 and 28 of this judgment, the United Kingdom Government takes the view that Article 16 of Directive 2004/38, including its rules on temporary absences, does not apply to continuous periods of residence which ended before 30 April 2006.

42 Conversely, CPAG and the Commission propose that the provisions of that article should be applied in full to such periods of continuous residence.

The Court's reply

43 As a preliminary point, it should be observed that the acquisition of the right of permanent residence provided for in Article 16 of Directive 2004/38 requires a continuous period of five years' legal residence in the host Member State.

44 In the context of the dispute in the main proceedings, it is common ground that Ms Lassal legally resided for a continuous period of more than five years in the host

Member State. However, she was absent from that Member State for 10 months after such a continuous period of more than five years legal residence before the date of transposition of Directive 2004/38, 30 April 2006. Essentially, the question referred by the national court is whether an absence prior to 30 April 2006 but following a continuous period of five years' legal residence in the host Member State, prevents a citizen of the Union from relying on the right of permanent residence under Article 16(1) of Directive 2004/38.

45 In that connection, in a case such as that at issue in the main proceedings, where the continuity of a period of legal residence of at least five years within the meaning of Article 16(1) of Directive 2004/38 is not disputed, the interpretation of Article 16(3) thereof is irrelevant. That provision specifies the temporary absences which may occur during the five-year period provided for in Article 16(1) without affecting the continuity of the residence period concerned and, therefore, the treatment of that residence period as a continuous period. However, and in any event, it is common ground that Ms Lassal's temporary absences do not fall into any of the categories set out in that provision.

46 Conversely, Article 16(4) of Directive 2004/38 deals with the possibility of losing the right of permanent residence. In that connection, that provision states that the right of permanent residence will be lost only through absence from the host Member State for a period exceeding two consecutive years.

47 As regards the application of Article 16(4) of Directive 2004/38 to temporary absences occurring before 30 April 2006, the United Kingdom and Belgian Governments submit that temporary absences from the host Member State, for a period of less than two consecutive years, which are not covered by Article 16(3) thereof and which took place before 30 April 2006, of citizens of the Unions who were legally resident for a continuous period of five years before that date preclude such citizens from acquiring the right of permanent residence provided for in that article, since, in so far as those

temporary absences predated the acquisition of the right of permanent residence, those citizens cannot benefit from the provisions of Article 16(4) of that directive and, consequently, their period of residence is not continuous and must be regarded as interrupted.

48 In that regard it is, of course, true that, as pointed out in paragraph 38 of this judgment, in so far as the right of permanent residence provided for in Article 16 of Directive 2004/38 may only be acquired from 30 April 2006, it does not expressly follow from Article 16(4) that the Citizens of the Unions who have resided legally in the host Member State for a continuous period of five years completed prior to that date may rely on their connection with the host Member State in order to avoid their temporary absences of less than two consecutive years prior to 30 April 2006 preventing them from acquiring the right of permanent residence.

49 However, it should be recalled that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, in particular, Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 50; Case C-306/05 *SGAE* [2006] ECR I-11519, paragraph 34; and Joined Cases C-402/07 and C-432/07 *Sturgeon and Others* [2009] ECR I-10923, paragraph 41).

50 In that sense, the enacting terms of an EU act are indissociably linked to the reasons given for it, so that, when it has to be interpreted, account must be taken of the reasons which led to its adoption (Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087, paragraph 97 and the case-law cited, and *Sturgeon and Others*, paragraph 42).

51 Likewise, the Court held that, where a provision of EU law is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness (see *Sturgeon and Others*, paragraph 47 and the case-law cited).

52 It must be stated that an interpretation such as that advocated by the United Kingdom and Belgian Governments would be contrary to the effectiveness and the purpose of Directive 2004/38 and the general scheme and spirit of Article 16 thereof.

53 In the first place, the objectives and the purpose of Directive 2004/38, set out in paragraphs 30 and 31 of this judgment, to facilitate the exercise of the primary right to move and reside freely on the territory of the Member States and to strengthen that right and, more specifically, the objectives and purpose of Article 16 of that directive, set out in paragraph 32 of this judgment, to promote social cohesion and to strengthen the feeling of Union citizenship, would be seriously compromised if that right of residence was refused to citizens of the European Union who had legally resided in the host Member State for a continuous period of five years completed before 30 April 2006, on the sole ground that there had been temporary absence of less than two consecutive years subsequent to that period but before that same date.

54 In the second place, the general scheme and the spirit of Article 16 of Directive 2004/38 also require Article 16(4) to be applicable to temporary absences prior to 30 April 2006, which occurred where continuous periods of five years' legal residence had been completed before that date.

55 It that connection, it should be borne in mind that Article 16(4) of Directive 2004/38 refers to loss of the right of permanent residence on account of absences of more

than two consecutive years from the host Member State. According to the *travaux préparatoires* for Directive 2004/38 such a measure could be justified because after an absence of that duration the link with the host Member State is loosened (see the Council's statement of reasons for common position (EC) No 6/2004 of 5 December 2003 with a view to the adoption of Directive 2004/38 (OJ 2004 C 54 E, p. 12), as far as concerns Article 16 thereof.

56 Article 16(4) of Directive 2004/38 falls to be applied independently of whether periods of residence completed before or after 30 April 2006 are concerned. In as much as residence periods of five years completed before 30 April 2006 are to be taken into account for the purpose of acquisition of the right of permanent residence provided for in Article 16(1) of Directive 2004/38, as is clear from the analysis in paragraph 29 to 40 of this judgment, Article 16(4) must necessarily apply to those periods. If that were not the case the Member States would be required to grant the right of permanent residence, pursuant to Article 16, even in cases of prolonged absences which call into question the link between the person concerned and the host Member State.

57 It follows that Article 16(4) of Directive 2004/38 is to apply to continuous periods of five years' legal residence completed before 30 April 2006 and in application implies, in particular, that absences from the host Member State of less than two consecutive years occurring after the five-year periods of continuous residence but before 30 April 2006 are not such as to affect the link of integration of the citizen of the Union concerned.

58 Accordingly, absences from the host Member State of less than two consecutive years which occurred before 30 April 2006 but following a continuous period of five years' legal residence completed before that date do not affect the acquisition of the right of permanent residence pursuant to Article 16(1) of Directive 2004/38.

59 In the light of the foregoing, the answer to the question referred is that Article 16(1) and (4) of Directive 2004/38 must be interpreted as follows:

— continuous periods of five years' residence completed before the date of transposition of Directive 2004/38, namely 30 April 2006, in accordance with earlier EU law instruments, must be taken into account for the purposes of the acquisition of the right of permanent residence pursuant to Article 16(1) thereof, and,

— absences from the host Member State of less than two consecutive years, which occurred before 30 April 2006 but following a continuous period of five years' legal residence completed before that date do not affect the acquisition of the right of permanent residence pursuant to Article 16(1).

Costs

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

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

Article 16(1) and (4) 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:

— **continuous periods of five years' residence completed before the date of transposition of Directive 2004/38, namely 30 April 2006, in accordance with earlier European Union law instruments, must be taken into account for the purposes of the acquisition of the right of permanent residence pursuant to Article 16(1) thereof, and**

— **absences from the host Member State of less than two consecutive years, which occurred before 30 April 2006 but following a continuous period of five years' legal residence completed before that date do not affect the acquisition of the right of permanent residence pursuant to Article 16(1) thereof.**

[Signatures]