Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

10 September 2019*

(Reference for a preliminary ruling — Citizenship of the Union — Article 21 TFEU — Right of Union citizens and their family members to move and reside freely in the territory of a Member State — Directive 2004/38/EC — Article 3(1) and Articles 15, 27, 28, 30 and 31 — Definition of 'beneficiary' — Third-country national, the spouse of a Union citizen who has exercised his right to freedom of movement — Return of the Union citizen to the Member State of which he is a national, where he is serving a prison sentence — Requirements imposed on the host Member State under Directive 2004/38/EC when making a decision to remove such a third-country national)

In Case C-94/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 16 January 2018, received at the Court on 12 February 2018, in the proceedings

Nalini Chenchooliah

v

Minister for Justice and Equality,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal (Rapporteur), M. Vilaras and C. Toader, Presidents of Chambers, A. Rosas, E. Juhász, M. Safjan, D. Šváby, C.G. Fernlund, C. Vajda, S. Rodin, L.S. Rossi and I. Jarukaitis, Judges,

Advocate General: M. Szpunar,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 January 2019,

after considering the observations submitted on behalf of:

– Ms Chenchooliah, by C. Power, Senior Counsel, and I. Whelan, Barrister-at-Law, instructed by M. Trayers and M. Moroney, Solicitors,

– the Minister for Justice and Equality, by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by N. Travers, Senior Counsel, S.-J. Hillery, Barrister-at-Law, and D. O'Loghlin, Solicitor,

– Ireland, by M. Brown, G. Hodge and A. Joyce, acting as Agents, and by N. Travers, Senior Counsel, S.-J. Hillery, Barrister-at-Law, and D. O'Loghlin, Solicitor,

* Language of the case: English.

– the Danish Government, by J. Nymann-Lindegren, M. Wolff and P.Z.L. Ngo, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and C.S. Schillemans, acting as Agents,

– the Austrian Government, by G. Hesse, acting as Agent,

– the European Commission, by E. Montaguti and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 May 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 14, 15, 27 and 28 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, and OJ 2005 L 197, p. 34).

2 The request has been made in proceedings between Ms Nalini Chenchooliah, a third-country national, and the Minister for Justice and Equality (Ireland) ('the Minister'), concerning a decision to deport Ms Chenchooliah following the return of her spouse, a Union citizen, to the Member State of which he is a national, where he is serving a prison sentence.

Legal context

EU law

3 Recitals 5, 23 and 24 of Directive 2004/38 are worded as follows:

'(5) The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality. …

…

(23) Expulsion of Union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State. The scope for such measures should therefore be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin.

(24) Accordingly, the greater the degree of integration of Union citizens and their family members in the host Member State, the greater the degree of protection against expulsion should be. …'

4 Article 1 of that directive, entitled ‘Subject’, 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;

(b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;

(c) the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health.’

5 Under the heading ‘Definitions’, Article 2 of Directive 2004/38 provides:

‘For the purpose of this Directive:

(1) “Union citizen” means any person having the nationality of a Member State;

(2) “Family member” means:
(a) the spouse;

…’

6 Article 3 of that directive, entitled ‘Beneficiaries’, provides in paragraph 1 thereof:

‘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.’

7 Chapter III of Directive 2004/38, entitled ‘Right of residence’, comprises Articles 6 to 15.

8 Article 6 of that directive, entitled ‘Right of residence for up to 3 months’, provides:

‘1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to 3 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.’

9 Article 7 of the directive states:

‘1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than 3 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

…

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).

…'

10 Article 12(2) of Directive 2004/38 lays down rules governing the retention of the right of residence by family members of a Union citizen who are not nationals of a Member State, in the event of the death of the Union citizen.

11 Article 13(2) of that directive governs the retention of the right of residence by family members of a Union citizen who are not nationals of a Member State, in the event of divorce, annulment of marriage or termination of a registered partnership.

12 Article 14 of that directive, entitled 'Retention of the right of residence', states as follows:

'1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.

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.

…

4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if:

(a) the Union citizens are workers or self-employed persons, or

(b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members 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.'

13 Article 15 of that directive, entitled ‘Procedural safeguards’, provides:

‘1. The procedures provided for by Articles 30 and 31 shall apply by analogy to all decisions restricting free movement of Union citizens and their family members on grounds other than public policy, public security or public health.

…

3. The host Member State may not impose a ban on entry in the context of an expulsion decision to which paragraph 1 applies.’

14 Articles 27, 28, 30 and 31 of Directive 2004/38 are in Chapter VI of that directive, entitled ‘Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health’.

15 Article 27 of Directive 2004/38, entitled ‘General principles’, states as follows:

‘1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

…’

16 Article 28 of that directive, entitled ‘Protection against expulsion’, provides as follows:

‘1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

…’

17 Article 30 of the directive, entitled ‘Notification of decisions’, is worded as follows:

‘1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.

2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.

3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.'

18 Article 31 of Directive 2004/38, entitled 'Procedural safeguards', provides:

'1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.

2. Where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except:

– where the expulsion decision is based on a previous judicial decision; or

– where the persons concerned have had previous access to judicial review; or

– where the expulsion decision is based on imperative grounds of public security under Article 28(3).

3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.

4. Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.'

Irish law

19 The Irish legislation transposing Directive 2004/38 is contained in the European Communities (Free Movement of Persons) Regulations 2015, which replaced, as of 1 February 2016, the European Communities (Free Movement of Person) (No 2) Regulations 2006 of 18 December 2006 ('the 2006 Regulations').

20 Regulation 20 of the 2006 Regulations laid down the rules governing the Minister's power to make what are referred to as 'removal orders'.

21 The Immigration Act 1999 ('the 1999 Act') lays down rules of domestic immigration law which are applicable outside the scope of Directive 2004/38.

22 Section 3 of the 1999 Act governs the Minister's power to make what are referred to as 'deportation orders'.

23 Under Section 3(1) of the 1999 Act, the Minister may make a deportation order to 'require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State'.

24 Pursuant to Section 3(2)(h) and (i) of the 1999 Act, a deportation order may be made in respect of persons who, respectively, 'in the opinion of the Minister, ha[ve] contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State' or 'whose deportation would, in the opinion of the Minister, be conducive to the common good'.

25 Under Section 3(3)(a) of the 1999 Act, where the Minister proposes to make a deportation order, he must notify the person concerned in writing of the proposal and the reasons for it.

26 Section 3(4) of the 1999 Act provides that notification of a proposal to make a deportation order must include, inter alia, the following:

– a statement that the person concerned may send representations within 15 working days;

– a statement that the person may leave the State voluntarily before the Minister decides the matter and that the person must inform the Minister of his or her arrangements for leaving; and

– a statement that the person may consent to the making of a deportation order within 15 working days, following which the Minister must arrange for the removal of the person from the State as soon as practicable.

27 Once made, a deportation order remains in force indefinitely. However, the person concerned may apply for amendment or revocation of such an order pursuant to Section 3(11) of the 1999 Act. When considering such an application, the Minister must decide whether the applicant has shown that there has been a change in circumstances since the making of the order such as to warrant its revocation. Such circumstances can include, inter alia, the fact that the person is a family member of a Union citizen who is exercising in Ireland free movement rights conferred by EU law.

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

28 Ms Chenchooliah, a Mauritian national, arrived in Ireland in around February 2005, holding a student visa, and resided there until 7 February 2012 on the basis of successive permissions to remain.

29 On 13 September 2011, she married a Portuguese national living in Ireland.

30 By letter of 2 February 2012, she applied for a residence card as the spouse of a Union citizen.

31 Subsequently, on a number of occasions, the Minister sought additional information, some of which Ms Chenchooliah provided by letter of 25 May 2012. By letter of 27 August 2012, she requested additional time to submit a contract of employment, stating that her spouse had just started a job.

32 By decision of 11 September 2012, the Minister refused Ms Chenchooliah's application for a residence card on the following grounds:

'You have failed to show that the EU citizen is involved in economic activity in the State and this does not satisfy the Minister that the EU citizen is exercising [his] rights through employment, self-employment, the pursuit of a course of study, involuntary unemployment or the possession of sufficient resources in accordance with the requirements of Regulation 6(2)(a) of the [2006] Regulations. Therefore you are not entitled to reside in [Ireland] in accordance with Regulation 6(2)(b) of the [2006] Regulations.'

33 By letter of 15 October 2012, Ms Chenchooliah provided evidence that her spouse had been employed in a restaurant for 2 weeks and sought an extension of the time allowed to submit an application for review of the decision of 11 September 2012.

34 By letter of 31 October 2012, the Minister agreed to extend that time. Subsequently, the Minister requested further information and stated that, if that information were not produced within 10 working days, the file would be referred to the Removals Unit.

35 Since Ms Chenchooliah did not provide any new information for almost 2 years, the decision of 11 September 2012 became final.

36 By letter of 17 July 2014, sent directly to the Minister, Ms Chenchooliah stated that, following a criminal conviction, her spouse had been in prison in Portugal since 16 June 2014, and sought permission to remain in Ireland on the basis of her personal circumstances.

37 By letter of 3 September 2014, the Minister informed Ms Chenchooliah that a removal order against her was being considered on the basis that her spouse, a Union citizen, had resided in Ireland for longer than 3 months without complying with the requirements of Regulation 6(2) of the 2006 Regulations, the provision intended to transpose Article 7(2) of Directive 2004/38 into Irish law, and that she was therefore no longer entitled to remain in Ireland.

38 Next, by letter of 26 November 2015, lawyers representing Ms Chenchooliah asked the Minister, pursuant to the discretionary power afforded under Irish law, to grant her leave to remain on the basis, inter alia, of Ms Chenchooliah's long period of residence in Ireland and her employment history and prospects.

39 By letter of 15 November 2016, the Minister informed Ms Chenchooliah that he had decided not to proceed with the removal order and instead to commence a deportation order process in accordance with Section 3 of the 1999 Act.

40 A proposal to make a deportation order was included with that letter and Ms Chenchooliah was invited to make submissions on the proposal. That proposal was based on Ms Chenchooliah's unlawful residence in Ireland since 7 February 2012 and on the Minister's opinion that her deportation would be conducive to the common good.

41 Also included with that letter was a previous decision, dated 21 October 2016, confirming that it had been decided not to make a removal order in respect of Ms Chenchooliah under the 2006 Regulations and the transitional provisions of the European Communities (Free Movement of Persons) Regulations 2015.

42 On 12 December 2016, the referring court granted Ms Chenchooliah leave to apply for judicial review of the decision of 21 October 2016 and to seek injunctive relief restraining the Minister from adopting a decision to deport her. That court also adopted interim measures to restrain pursuit of the process for deporting Ms Chenchooliah pending determination of her judicial review application.

43 The referring court is of the view that the Court of Justice has not ruled previously on whether, in a situation such as that in the present case, in which a Union citizen has returned to the Member State of which he is a national, in order, in the present case, to serve a prison sentence, and therefore no longer exercises in the host Member State his right to freedom of movement under EU law, a third-country national, the spouse of that Union citizen, is still covered by Directive 2004/38 in her capacity as 'beneficiary' within the meaning of Article 3(1) of that directive, with the result that her removal from the host Member State in which she now resides unlawfully is governed by, inter alia, Articles 27, 28 and 31 of the directive.

44 The High Court refers in that connection to a judgment it delivered on 29 April 2014, in which it decided, in a situation similar to that in the main proceedings, that that question should be answered in the affirmative. According to that judgment, that solution may be based on the Court's case-law, in particular the judgment of 25 July 2008, *Metock and Others* (C-127/08, EU:C:2008:449).

45 The referring court states that the lessons, if any, which may be drawn from that decision for the purpose of the present case were the subject of debate before it.

46 The Minister took issue with that judgment, contending, inter alia, that it disregards the essential fact that a family member of a Union citizen falls outside the scope of Directive 2004/38 if that citizen does not in fact currently exercise his right to freedom of movement. In such a case, a decision to remove such a family member is governed, not by the provisions of Chapter VI of that directive, but by the national law applicable outside the scope of the directive.

47 Furthermore, an interpretation to the contrary would require it to be shown that the person concerned poses a risk to public policy or public security, which would make it very difficult, if not impossible in practice, to remove third-country nationals who are spouses of Union citizens and who may have enjoyed, at one time, only a temporary right of residence on account of the employment of their spouses in the host Member State, regardless of the current employment of those Union citizens or the place where they now reside, which might even be outside the European Union.

48 On the other hand, Ms Chenchooliah argued before the referring court that the judgment of 29 April 2014 delivered by that court supports her position that, as a person who at one time, on account of her marriage, had at the very least a temporary 3-month right of residence under Article 6 of Directive 2004/38, she is still covered by that directive and can therefore be expelled from the territory of the host Member State only in compliance with the rules and safeguards laid down by that directive, including those set out in Articles 27 and 28 thereof.

49 In those circumstances, the High Court decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Where the spouse of an EU citizen who has exercised free movement rights under Article 6 of Directive [2004/38] has been refused a right of residence under Article 7 on the basis that the EU citizen in question was not, or was no longer, exercising EU Treaty rights in the host Member State concerned, and where it is proposed that the spouse should be expelled from that Member State, must that expulsion be pursuant to and in compliance with the provisions of the Directive, or does it fall within the competence of the national law of the Member State?

(2) If the answer to the above question is that the expulsion must be made pursuant to the provisions of the directive, must the expulsion be made pursuant to and in compliance with the requirements of Chapter VI of the Directive, and particularly Articles 27 and 28 thereof, or may the Member State, in such circumstances, rely on other provisions of the Directive, in particular Articles 14 and 15 thereof?'

Consideration of the questions referred

50 By its two questions, which it is appropriate to consider together, the referring court seeks to ascertain, in essence, whether the provisions of (i) Chapter VI of Directive 2004/38, in particular Articles 27 and 28 thereof, and (ii) Articles 14 and 15 of the directive are to be interpreted as meaning that one or other of those sets of provisions are applicable to a decision to expel a third-country national on the ground that that person no longer has a right of residence under the directive in a situation, such as that at issue in the main proceedings, where the third-country national concerned married a Union

citizen at a time when that citizen was exercising his right to freedom of movement by moving to and residing with that third-country national in the host Member State and, subsequently, the Union citizen returned to the Member State of which he is a national.

51 Before examining those questions, it is necessary first to define their scope.

52 In the present case, Ms Chenchooliah, a third-country national, does not claim that she has a right of residence deriving from the right of residence of her spouse, a Union citizen, under Directive 2004/38. Her claim seeking such a right under Article 7 of that directive was rejected by a decision which has become final and which she does not contest.

53 On the other hand, she maintains that her — now unlawful — residence in Ireland, the host Member State, cannot be brought to an end by a deportation order made under Section 3 of the 1999 Act, which automatically imposes an indefinite ban on entry into the territory, but may give rise only to an expulsion decision adopted in a manner consistent with the protection she is afforded under Directive 2004/38, in particular Articles 27 and 28 thereof.

54 That having being clarified, it is appropriate to observe, first of all, that, in accordance with Article 3(1) of Directive 2004/38, Union citizens who move to or reside in a Member State other than that of which they are a national, and their family members, as defined in Article 2(2) of that directive, who accompany or join them, fall within the scope of the directive and are beneficiaries of the rights conferred by it (judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 34 and the case-law cited).

55 In the present case, it is common ground that Ms Chenchooliah's spouse, who is a Portuguese national and therefore a Union citizen, exercised his right to freedom of movement by moving to and residing in a Member State other than that of which he is a national when he left Portugal to go and live in Ireland.

56 It is also common ground that Ms Chenchooliah, by reason of her marriage to a Union citizen at a time when the latter was exercising his right to freedom of movement, lived for a certain time with her spouse in Ireland by virtue of the derived right of residence conferred by Article 6(2) of Directive 2004/38 on family members of Union citizens.

57 Moreover, the fact that Ms Chenchooliah entered Ireland before her spouse and before becoming a member of his family is irrelevant as it is common ground that she lived with her spouse in the host Member State.

58 As the Court has previously held, the words 'family members [of Union citizens] … who accompany … them' in Article 3(1) of Directive 2004/38 are to be interpreted as covering both the family members of a Union citizen who entered the host Member State with that citizen and those who reside with that citizen in that Member State, without it being necessary, in the latter case, to make a distinction according to whether the third-country nationals entered that Member State before or after the Union citizen or before or after becoming members of his family (judgment of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449, paragraph 93).

59 However, since her spouse's return to Portugal, Ms Chenchooliah no longer enjoys the status of 'beneficiary' within the meaning of Article 3(1) of Directive 2004/38.

60 As she stayed in Ireland, where she no longer resides with her Portuguese spouse, and even though, in the past, the latter exercised his right to freedom of movement by going to Ireland and living with her there for a certain time, Ms Chenchooliah no longer fulfils the requirement of accompanying or joining a Union citizen imposed by Article 3(1) of Directive 2004/38.

61 As the Court has observed, that requirement, which is also set out, inter alia, in Article 6(2) and Article 7(2) of Directive 2004/38, is consistent with the purpose of and justification for derived rights of entry and residence which that directive provides for family members of Union citizens. The purpose of and justification for such derived rights are based on the fact that a refusal to allow such rights would be such as to interfere, in particular, with the effective exercise by the Union citizen concerned of his right to freedom of movement and the exercise and effectiveness of the rights which Article 21(1) TFEU confers on such a citizen (see, to that effect, judgments of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraphs 62 and 63, and of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 48).

62 Furthermore, the concept of 'beneficiary' within the meaning of Article 3(1) of Directive 2004/38 is a dynamic concept in that, even though acquired in the past, the status of beneficiary may subsequently be forfeited if the requirements laid down by that provision are no longer met (see, by analogy, judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraphs 38 to 42).

63 In that context, the Court has held that the application of Directive 2004/38 solely to the family members of a Union citizen who 'accompany' or 'join' that citizen within the meaning of Article 3(1) of the directive is equivalent to limiting the rights of entry and residence of family members of a Union citizen in the Member State where that citizen resides (judgment of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449, paragraph 94).

64 The Court added that, from the time when a third-country national who is a family member of a Union citizen derives rights of entry and residence in the host Member State from Directive 2004/38, that State may restrict those rights only in compliance with Articles 27 and 35 of the directive (judgment of 25 July 2008, *Metock and Others*, C-127/08. EU:C:2008:449, paragraph 95).

65 Accordingly, provided that a third-country national, the spouse of a Union citizen who has exercised his right to freedom of movement, resides with that citizen in the host Member State and is therefore a 'beneficiary' within the meaning of Article 3(1) of Directive 2004/38, the right of residence derived by the third-country national from that directive, in particular from Article 7(2) thereof, may be restricted only in compliance with, inter alia, Articles 27 and 35 of that directive.

66 However, such a situation is different from that in the main proceedings, which is characterised by the fact that the third-country national in question has not lived with her spouse, a Union citizen, in the host Member State since the latter left that State, and she has been refused a right of residence under Article 7(2) of Directive 2004/38. Therefore, that third-country national no longer has a right of residence under the directive also because she does not fall within any of the situations referred to in Article 12(2) and Article 13(2) of the directive, under which the right of residence of family members of a Union citizen who are not nationals of a Member State is retained.

67 It follows that the lessons to be drawn from paragraph 95 of the judgment of 25 July 2008, *Metock and Others* (C-127/08, EU:C:2008:449) are not applicable to the situation in the main proceedings.

68 The question nevertheless remains as to whether the fact that Ms Chenchooliah no longer has the status of 'beneficiary' within the meaning of Article 3(1) of Directive 2004/38 means that an expulsion decision, taken essentially on the ground that she was refused a right of residence under Article 7(2) of the directive, is governed, not by that directive, but only by the national law applicable outside the scope of the directive.

69 That question must be answered in the negative.

70 It should be noted in that regard that Directive 2004/38 does not contain only rules governing the conditions under which one of the various types of residence rights it makes provision for may be obtained and the conditions to be met in order to be able to continue to enjoy the rights concerned.

That directive also lays down a set of rules intended to govern the situation arising in which entitlement to one of those rights is lost, inter alia where the Union citizen leaves the host Member State.

71 Thus, Article 15 of Directive 2004/38, entitled 'Procedural guarantees', provides, in paragraph 1 thereof, that the procedures provided for by Articles 30 and 31 of the directive are to apply by analogy to all decisions restricting free movement of Union citizens and their family members on grounds other than public policy, public security or public health.

72 Furthermore, Article 15(3) of Directive 2004/38 provides that the host Member State may not impose a ban on entry in the context of an expulsion decision.

73 According to the very wording of Article 15 of Directive 2004/38, and on pain of depriving that provision of a large part of its substance and practical effect, the scope of Article 15 must extend to an expulsion decision made, as in the main proceedings, on grounds wholly unrelated to any danger to public policy, public safety or public health but which are connected to the fact that a family member of a Union citizen who, in the past, enjoyed a temporary right of residence under Directive 2004/38 deriving from the exercise by the Union citizen of his right to freedom of movement, now no longer has such a right of residence following the departure of that citizen from the host Member State and his return to the Member State of which he is a national.

74 Indeed, that provision, which is in Chapter III of Directive 2004/38, entitled 'Right of residence', lays down the rules applicable when a temporary right of residence under the directive comes to an end, in particular where a Union citizen or one of his family members who, in the past, had a right of residence of up to 3 months, or longer than 3 months, by virtue of Article 6 or Article 7 of that directive respectively, no longer satisfies the requirements for the grant of the right of residence concerned and may therefore, in principle, be expelled by the host Member State.

75 In the present case, for a certain time, Ms Chenchooliah enjoyed a right of residence in Ireland pursuant to Article 6(2) of Directive 2004/38, following her marriage to a Union citizen who exercised his right to move freely within that Member State.

76 However, following the departure of her spouse, she lost that right of residence as she no longer satisfied the condition requiring that she accompany or join a Union citizen exercising his right to freedom of movement, which led to the rejection of her claim seeking a right of residence under Article 7 of Directive 2004/38.

77 Since, as indicated in paragraph 66 above, such a situation is not covered by any of the situations referred to in Article 12(2) and Article 13(2) of Directive 2004/38, in which the right of residence of family members of a Union citizen who are not nationals of a Member State is retained, the host Member State may make an expulsion decision regarding Ms Chenchooliah under Article 15 of that directive. However, such a decision may be taken only in compliance with the requirements laid down in that provision.

78 As the Advocate General also observed, in essence, in point 75 of his Opinion, that finding can be reconciled, in a situation such as that at issue in the main proceedings, with the fact that the person concerned no longer has the status of 'beneficiary' within the meaning of Article 3(1) of Directive 2004/38.

79 The effect of the loss of that status is that the person concerned no longer has the rights of movement and residence in the territory of the host Member State which that person had held for a certain period of time, as he or she no longer meets the requirements to which those rights are subject. On the other

hand, that loss does not mean, as is apparent from paragraph 74 above, that Directive 2004/38 is no longer applicable where the host Member States takes a decision to expel that person on such a ground.

80 As regards the consequences of the fact that Article 15 of Directive 2004/38 is applicable in a situation such as that at issue in the main proceedings, it is clear from paragraph 1 of that provision that the safeguards laid down in Articles 30 and 31 of the directive are applicable 'by analogy'.

81 The expression 'by analogy' must be understood as meaning that the provisions of Articles 30 and 31 of Directive 2004/38 are applicable, in the context of Article 15 thereof, only if they can actually be applied, with the necessary adjustments, if appropriate, to decisions made on grounds other than public policy, public security or public health.

82 On the other hand, that is not the case with regard to Article 30(2), the third indent of Article 31(2) or Article 31(4) of Directive 2004/38.

83 Those provisions, the application of which must be strictly confined to expulsion decisions made on grounds of public policy, public security or public health, do not therefore apply to expulsion decisions covered by Article 15 of Directive 2004/38.

84 As regards the provisions laid down in Articles 30 and 31 of Directive 2004/38 which are applicable in connection with Article 15 thereof, it should be noted, with regard, in particular, to Article 31(1) of the directive and the right of access to judicial procedures for seeking redress which must be granted in accordance with that provision, that, since such procedures form part of the 'implementation of Union law' within the meaning of Article 51(1) of the Charter of Fundamental Rights of the European Union, the rules governing such procedures, the purpose of which is to safeguard the rights conferred by Directive 2004/38, must comply with, inter alia, the requirements pertaining to the right to an effective remedy enshrined in Article 47 of that charter.

85 Moreover, in accordance with Article 31(3) of Directive 2004/38, which is applicable in connection with Article 15 thereof, the redress procedures must not only allow for an examination of the legality of the decision concerned, as well as of the facts and circumstances on which it is based, but also ensure that the decision in question is not disproportionate.

86 It should also be observed that, as Article 15(1) of Directive 2004/38 refers only to the application by analogy of the provisions of Articles 30 and 31 of that directive, other provisions of Chapter VI of the directive, including Articles 27 and 28 thereof, are not applicable where a decision is adopted under Article 15 of the directive.

87 As indicated in paragraph 65 above, the provisions of Articles 27 and 28 of Directive 2004/38 are applicable only if the person concerned currently derives from that directive a right of residence in the host Member State which is either temporary or permanent (see, to that effect, judgment of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449, paragraph 95).

88 Lastly, it should be noted that, in accordance with Article 15(3) of Directive 2004/38, the expulsion decision that may be made in the case in the main proceedings cannot, under any circumstances, impose a ban on entry into the territory.

89 In the light of all the foregoing, the answer to the questions referred is that Article 15 of Directive 2004/38 is to be interpreted as being applicable to a decision to expel a third-country national on the ground that that person no longer has a right of residence under the directive in a situation, such as that at issue in the main proceedings, where the third-country national concerned married a Union citizen at a time when that citizen was exercising his right to freedom of movement by moving to and residing with that third-country national in the host Member State and, subsequently, the Union

citizen returned to the Member State of which he is a national. It follows that the relevant safeguards laid down in Articles 30 and 31 of Directive 2004/38 are applicable when such an expulsion decision is adopted and it is not possible, under any circumstances, for such a decision to impose a ban on entry into the territory.

Costs

90 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 (Grand Chamber) hereby rules:

Article 15 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, is to be interpreted as being applicable to a decision to expel a third-country national on the ground that that person no longer has a right of residence under the directive in a situation, such as that at issue in the main proceedings, where the third-country national concerned married a Union citizen at a time when that citizen was exercising his right to freedom of movement by moving to and residing with that third-country national in the host Member State and, subsequently, the Union citizen returned to the Member State of which he is a national. It follows that the relevant safeguards laid down in Articles 30 and 31 of Directive 2004/38 are applicable when such an expulsion decision is adopted and it is not possible, under any circumstances, for such a decision to impose a ban on entry into the territory.

Lenaerts	Silva de Lapuerta	Arabadjiev
Prechal	Vilaras	Toader
Rosas	Juhász	Safjan
Šváby	Fernlund	Vajda
Rodin	Rossi	Jarukaitis

Delivered in open court in Luxembourg on 10 September 2019.

A. Calot Escobar	K. Lenaerts
Registrar	President