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Provisional text

JUDGMENT OF THE COURT (First Chamber)

27 June 2018 (*)

(Reference for a preliminary ruling — Citizens of the European Union — Directive 2004/38/EC — Article 10(1) — Application for a residence card as a family member — Issuance — Time limit — Adoption and notification of the decision — Consequences of non-compliance with the period — Procedural autonomy of Member States — Principle of effectiveness)

In Case C-246/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decision of 27 April 2017, received at the Court on 10 May 2017, in the proceedings

Ibrahima Diallo

v

État belge,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, C.G. Fernlund, J.-C. Bonichot, A. Arabadjiev and S. Rodin, Judges,

Advocate General: Y. Bot,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 11 January 2018,

after considering the observations submitted on behalf of:

– Mr Diallo, by D. Andrien, avocat,

- the Belgian Government, by C. Pochet, M. Jacobs and L. Van den Broeck, and by P. Cottin, acting as Agents, and by F. Motulsky, avocat,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by G. Wils and by E. Montaguti, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2018,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 10(1) 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 the context of proceedings between Mr Diallo, a Guinean national, and the État belge (Belgian State) concerning the rejection of his application for a residence card of a family member of a European Union citizen.

Legal context

EU law

3 In Chapter II, on family members, Article 4(2)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) provides in particular:

‘(2) The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;’

4 Recital 5 of Directive 2004/38 reads as follows:

‘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.

...’

5 Article 1 of Directive 2004/38 provides:

‘This Directive lays down:

- (a) the conditions governing the exercise of the right to 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.’

6 Article 2 of the same directive provides:

‘For the purposes of this Directive:

...

(2) “family member” means:

(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

(c) the direct descendants who are under the age of 21 or are dependents and those of the spouse or partner as defined in point (b);

(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

(3) “host Member State” means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.’

7 Article 3 of Directive 2004/38, headed ‘Beneficiaries’, provides in paragraph 1:

‘This Directive shall apply to all Union citizens who move 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.’

8 Article 5 of that directive, headed ‘Right of entry’, provides in paragraph 2:

‘Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 [of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1)] or, where appropriate, with national law. For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.

Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.’

9 Article 10 of Directive 2004/38 provides:

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

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

(a) a valid passport;

(b) a document attesting to the existence of a family relationship or of a registered partnership;

(c) the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the Union citizen whom they are accompanying or joining;

(d) in the cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;

...’

Belgian law

10 As the referring court sets out, in accordance with Article 42(1) of the loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Law of 15 December 1980 on entry into the territory, residence, establishment and removal of foreign nationals) (*Moniteur belge* of 31 December 1981, p. 14584; ‘the Law of 15 December 1980’), the right of residence in Belgian territory is to be recognised no later than six months from the date of the application.

11 Under Article 52(4), second subparagraph, of the arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Royal Decree of 8 October 1981 on entry into the territory, residence, establishment and removal of foreign nationals) (*Moniteur belge* of 27 October 1981, p. 13740; ‘the Royal Decree of 8 October 1981’), if no decision on the right of residence of a family member of a Union citizen is taken within a period of six months from the application for recognition of such a right, a residence card of a family member of a Union citizen is to be issued to him automatically.

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

12 On 25 November 2014, Mr Diallo, a Guinean national, applied, as a relative in the ascending line of a child of Netherlands nationality domiciled in Belgium, for a residence card of a family member of a Union citizen.

13 On 22 May 2015, the Belgian State refused to grant that application and ordered Mr Diallo to leave the territory. Mr Diallo was, it is claimed, notified of that decision on 3 June 2015.

14 In response to Mr Diallo’s appeal, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), by judgment of 29 September 2015, annulled the decision of 22 May 2015 on the ground of failure to state reasons.

15 On 9 November 2015, the competent Belgian authorities adopted a new decision refusing to grant residence, accompanied by an order to leave the territory. That decision was notified to Mr Diallo on 26 November 2015. That decision stated, in essence, that Mr Diallo had failed to demonstrate within the requisite time period that he could benefit from a right of residence for more than three months as ‘a family member of a Union citizen’. More specifically, the Belgian State considered that (i) Mr Diallo had not proved that he had sufficient resources; and (ii) he had not validly demonstrated that his child, who has Netherlands nationality, was his dependant or that he had actual custody of the child.

16 On 11 December 2015, Mr Diallo brought an action seeking annulment of the decision of 9 November 2015 before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings). By judgment of 23 February 2016, the Council dismissed that action.

17 On 25 March 2016, Mr Diallo brought an administrative appeal on a point of law against that judgment before the Conseil d’État (Council of State, Belgium). In support of his appeal, Mr Diallo submits, in particular, that under Article 10(1) of Directive 2004/38 the decision on the application for a residence card must be notified to the applicant within a period of six months following the submission of the application, and that national law must be interpreted in such a way as to meet that requirement. He also takes the view that granting the competent national authority a further period of six months, following the annulment of an initial decision, renders Article 10(1) of Directive 2004/38 redundant.

18 The Belgian State contends, in particular, that no statutory or regulatory provision lays down a period of notification of a decision on an application for a residence card. It argues that the competent national authority is required only to adopt such a decision within a period of six months. Furthermore, it submits that, inasmuch as Directive 2004/38 does not regulate the effects arising from the annulment judgment of 29 September 2015, namely the period within which a new decision must be taken by the competent national authority following the judicial annulment of an initial decision, that question is a matter of national law. In any case, the Belgian State takes the view that it has not been demonstrated that opening a new six-month period in which to decide on an application for a residence card following a judicial annulment is unreasonable.

19 It is in that context that the referring court notes, first of all, that national law provides only that the right of residence is to be granted no later than six months from the date of the application, without specifying whether the decision on the grant of the right of residence must be notified to the person concerned within that period. That court considers that, in order to apply national law in accordance with the requirements of Article 10(1) of Directive 2004/38, it must be determined whether that provision must be interpreted as meaning that the decision as to whether to recognise a right of residence must be taken and notified within the period of six months.

20 Next, the referring court states that Directive 2004/38 does not regulate the consequences of the annulment of a decision concerning an application for a residence card. More specifically, it entertains doubts as to the time period available to the competent national authority to decide on an application for a residence card following the judicial annulment of its initial decision refusing to grant the right at issue. In that regard, the court considers that, in order to determine that new time period, it must be ascertained whether the principle of effectiveness precludes the competent national authority being allowed the full six-month period provided for in Article 10(1) of Directive 2004/38, following the annulment of its decision.

21 Furthermore, the referring court notes that, according to national case-law, taking into account the mandatory nature of the time period referred to in Article 10(1) of Directive 2004/38

and the effects of an annulment judgment, the competent national authority is allowed, as from the notification of that judgment, the full period which it had to decide on an application for a residence card and not only the remainder of the period yet to run as at the date on which the annulled measure was adopted.

22 Lastly, the referring court seeks clarification as to whether Directive 2004/38 precludes a residence card being issued automatically to the applicant on account of the period of six months, laid down in Article 10(1) of that Directive, being exceeded, even where the applicant does not qualify for it. In that regard, the referring court explains that, if it were apparent that the time period referred to in Article 10(1) of Directive 2004/38 had actually been exceeded in the case in the main proceedings, and that the directive did not preclude the residence card sought being issued as a consequence of exceeding that period, the decision of 9 November 2015, refusing to grant the residence card to Mr Diallo, should then be considered unlawful.

23 It is in that context that the Conseil d'État (Council of State) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 10(1) of Directive 2004/38 to be interpreted as requiring that the decision as to whether to recognise a right of residence must be taken and notified within a period of six months, or as permitting the decision to be taken within that period but notified subsequently? If such a decision may be notified subsequently, within what period must this be done?

(2) Is Article [10(1)] of [Directive 2004/38], read in conjunction with Article 5 [of that directive], Article [5(4)] of [Directive 2003/86] and Articles 7, 20, 21 and 41 of the Charter of Fundamental Rights of the [European] Union, to be interpreted and applied as meaning that the decision adopted on that basis need only be taken within the period of six months which it prescribes, without there being any period applicable to notification or any impact whatsoever on the right of residence where notification occurs after expiry of that period?

(3) For the purposes of guaranteeing the effectiveness of the right to residence of a member of the family of a Union citizen, would it be contrary to the principle of effectiveness for a national authority, following the annulment of a decision relating to such a right, once again to be allowed the full period of six months which had been available to it under Article [10(1)] of [Directive 2004/38]? If so, what further period is allowed to [that] national authority following the annulment of a decision by which it refused to recognise the right at issue?

(4) Are Articles 5, 10 and 31 of Directive [2004/38], read in conjunction with Articles 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950], with Articles 7, 24, 41 and 47 of the [Charter of Fundamental Rights] and Article [21 TFEU], compatible with national case-law and provisions, such as Article 39/2(2), [Articles] 40, 40a, 42 and 43 of the Law of 15 December 1980, and Article 52(4) of the Royal Decree of 8 October 1981, which under a judgment delivered by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings annulling a decision refusing residence on the basis of those provisions interrupts, and does not suspend, the mandatory period of six months prescribed by Article 10 of Directive 2004/38, by Article 42 of the Law of 15 December 1980 and by Article 52 of the Royal Decree of 8 October 1981?

(5) Does Directive [2004/38] require that, where the period of six months laid down by Article 10(1) of that directive is exceeded, some consequence must follow and, if so, what consequence? Does that directive require or permit the consequence of exceeding the period to be

the automatic grant of the residence card sought, without any finding having been made that the applicant does in fact satisfy the conditions for the enjoyment of the right which he claims?’

Consideration of the questions referred

The Court’s jurisdiction and the admissibility of the questions referred

24 The Belgian Government submits that the Court has no jurisdiction to answer the referring court’s questions, since the situation of the applicant in the main proceedings does not come within the scope of EU law.

25 The Belgian Government claims, in the first place, that Mr Diallo cannot benefit from the provisions of Directive 2004/38, since he is not a ‘family member’ within the meaning of Article 2(2) of Directive 2004/38. It is argued, in the second place, that the situation in the main proceedings does not come within the scope of Directive 2003/86, since Mr Diallo’s application for a residence card is based solely on his capacity as a relative in the ascending line of a Union citizen. In the third place, the Belgian Government takes the view that no right of residence can be granted to the applicant in the main proceedings on the basis of Articles 20 and 21 TFEU.

26 In that regard, it should be noted that, by the questions referred, the referring court is asking the Court of Justice to interpret Article 10(1) of Directive 2004/38, taking into account other provisions contained in that directive, Directive 2003/86, the TFEU and the Charter of Fundamental Rights.

27 Furthermore, the issue of whether a third-country national comes within the scope of Directives 2003/86 and/or 2004/38 necessitates the interpretation of EU law, particularly of the conditions laid down in Article 4 of Directive 2003/86 and in Articles 2 and 3 of Directive 2004/38 (see, to that effect, judgments of 13 September 2016, *CS*, C-304/14, EU:C:2016:674, paragraph 22, and of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 44).

28 In accordance with Article 267 TFEU, the Court has jurisdiction to give preliminary rulings concerning the interpretation, inter alia, of the Treaties, the Charter of Fundamental Rights, and the directives covered by the questions referred for a preliminary ruling.

29 In so far as, by its line of argument, the Belgian Government seeks in reality to challenge the admissibility of the questions referred for a preliminary ruling, it should be recalled that, according to settled case-law, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, inter alia, judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraph 23).

30 In the present case, the referring court has clearly stated the reasons for which the interpretation of the questions referred to the Court is required in order for the dispute in the main proceedings to be decided. It is apparent from those statements that the Court’s answer to those questions is likely to have a direct impact on the assessment of Mr Diallo’s individual situation, in particular as to the question of whether the competent national authorities should have issued a residence card of a family member of a Union citizen to him.

31 On that basis, it is clear that the Court has jurisdiction to answer the questions referred for a preliminary ruling by the national court and that those questions must be considered admissible.

Substance

The first and second questions

32 By its first and second questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 10(1) of Directive 2004/38 must be interpreted as meaning that the decision on the application for a residence card of a family member of a Union citizen must be adopted and notified within the period of six months laid down in that provision.

33 In that regard, Article 10(1) of Directive 2004/38 provides that the right of residence of family members of a Union citizen who are not nationals of a Member State is to be evidenced by the issuing of a document called ‘Residence card of a family member of a Union citizen’ no later than six months from the date on which they submit the application for that residence card.

34 It is therefore apparent from the very wording of that provision that the Member States are bound to issue a residence card to family members of a Union citizen, within the meaning of Article 2(2) of Directive 2004/38, within a maximum period of six months following their application.

35 As noted by the Advocate General in point 44 of his Opinion, the use of the words ‘no later than six months from the date on which they submit the application’ clearly indicates that the Member States must issue a residence card of a family member of a Union citizen to the person concerned within that period.

36 The concept of ‘issuing’, referred to in Article 10(1) of Directive 2004/38, implies — as noted, in essence, by the Advocate General in points 45 and 46 of his Opinion — that, within the period of six months laid down in that provision, the competent national authorities must examine the application, adopt a decision and, in the case where the applicant qualifies for the right of residence on the basis of Directive 2004/38, issue that residence card to that applicant.

37 That interpretation is, moreover, as noted by the Advocate General in point 49 of his Opinion, confirmed by the case-law of the Court, which has ruled, with regard to the issuing of the residence card referred to in Directive 2004/38, that the EU legislature essentially confined itself to listing, in Article 10 of that directive, the documents to be presented in order to obtain such a card, which is then to be furnished within six months from the date on which the application was submitted (judgment of 5 September 2012, *Rahman and Others*, C-83/11, EU:C:2012:519, paragraph 42).

38 Accordingly, the obligation for Member States to issue the residence card to a family member of a Union citizen within the mandatory period of six months provided for in Article 10(1) of Directive 2004/38 necessarily implies the adoption and notification of a decision to the person concerned before that period expires.

39 The same applies when the competent national authorities refuse to issue the residence card of a family member of a Union citizen to the person concerned.

40 In the administrative procedure instituted in Article 10 of Directive 2004/38 — which aims to verify, within that six-month period, the individual situation of third-country nationals in the light of the provisions of EU law and, in particular, whether those nationals come within the scope of the

concept of ‘family member’, within the meaning of that directive — the competent national authorities may ultimately adopt either a positive or negative decision.

41 On that basis, the notification of the decision on the application for a residence card of a family member of a Union citizen cannot be notified to the applicant within different time periods depending on whether the decision adopted by the competent national authority is in the positive or the negative.

42 Consequently, if, following the examination of the application for a residence card, the competent national authority finds that the conditions laid down for that purpose have not been met, that authority is required to adopt and notify the decision refusing the issuing of the residence card to the applicant within the same period of six months.

43 In the light of all of the foregoing considerations, the answer to the first and second questions is that Article 10(1) of Directive 2004/38 must be interpreted as meaning that the decision on the application for a residence card of a family member of a Union citizen must be adopted and notified within the period of six months laid down in that provision.

The fifth question

44 By its fifth question, which it is appropriate to examine before the third and fourth questions, the referring court is asking, in essence, whether Directive 2004/38 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which requires competent national authorities to issue automatically a residence card of a family member of a Union citizen to the person concerned, when the period of six months, referred to in Article 10(1) of Directive 2004/38, is exceeded, without finding beforehand that the person concerned actually meets the conditions for residing in the host Member State in accordance with EU law.

45 In that regard, it should be noted that Directive 2004/38 does not contain any provision governing the consequences of the period referred to in Article 10(1) of Directive 2004/38 being exceeded, as that issue comes, in principle, within the scope of the procedural autonomy of the Member States, subject to compliance with the principles of effectiveness and equivalence (see, to that effect, judgment of 17 March 2016, *Bensada Benallal*, C-161/15, EU:C:2016:175, paragraph 24).

46 On that basis, while EU law in no way precludes the Member States establishing rules on implicit acceptance or authorisation, such rules must nevertheless not impair the effectiveness of EU law.

47 In that respect, as is apparent from Article 10(1) of Directive 2004/38, the right of residence of family members of a Union citizen, within the meaning of Article 2(2) of that Directive, is to be ‘evidenced’ by the issuing of a residence card of a family member of a Union citizen. To that end, Article 10(1) of that directive sets out the documents intended to establish capacity as a ‘family member’, within the meaning of Directive 2004/38, which third-country nationals must submit in order to obtain that residence card.

48 As is apparent from the settled case-law of the Court, the issuing of a residence card, such as that referred to in Article 10(1) of Directive 2004/38, to a third-country national, must be regarded not as a measure giving rise to rights, but as a measure by a Member State serving to prove the individual position of such a national in light of the provisions of EU law (see, to that effect,

judgments of 21 July 2011, *Dias*, C-325/09, EU:C:2011:498, paragraph 48, and of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraph 60).

49 The declaratory character of residence permits means that those permits merely certify that a right already exists for the person concerned (judgments of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449, paragraph 52, and of 21 July 2011, *Dias*, C-325/09, EU:C:2011:498, paragraph 54).

50 It follows that Article 10(1) of Directive 2004/38 precludes the residence card of a family member of a Union citizen being issued to a third-country national who does not meet the requirements set out by that article for its allocation.

51 In those circumstances, while there is nothing to prevent national legislation from providing that silence on the part of the competent administration for a period of six months from the lodging of the application constitutes a refusal, the very terms of Directive 2004/38 preclude that silence from constituting an acceptance.

52 However, in the case in the main proceedings, first, it is apparent from the file submitted to the Court that the applicant in the main proceedings cannot rely on his standing as ‘dependent direct relative in the ascending line’ of the Union citizen concerned, within the meaning of Article 2(2)(d) of Directive 2004/38 and of Article 4(2)(a) of Directive 2003/86, so that he cannot be considered a ‘family member’ within the meaning of those provisions (see, to that effect, judgment of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraph 54).

53 According to settled case-law of the Court, not all third-country nationals derive rights of entry into and residence in a Member State from Directive 2004/38, but only those who are a ‘family member’, within the meaning of Article 2(2) of that directive, of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national (judgment of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraph 51).

54 Secondly, it is apparent from the file submitted to the Court, together with the statements made by the Belgian Government at the hearing, that the national legislation at issue in the main proceedings provides for a system of automatically issuing residence cards of family members of a Union citizen under which the competent national authority must automatically issue such cards to applicants when the period of six months, referred to in Article 10(1) of Directive 2004/38, is exceeded.

55 Such a system, in so far as it allows residence cards to be issued to persons who do not qualify for them, is contrary to the objectives of Directive 2004/38.

56 Taking into account all the foregoing considerations, the answer to the fifth question is that Directive 2004/38 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which requires competent national authorities to issue automatically a residence card of a family member of a European Union citizen to the person concerned, where the period of six months, referred to in Article 10(1) of Directive 2004/38, is exceeded, without finding, beforehand, that the person concerned actually meets the conditions for residing in the host Member State in accordance with EU law.

The third and fourth questions

57 By its third and fourth questions, which it is appropriate to examine together, the referring court is asking, in essence, whether EU law must be interpreted as precluding national case-law, such as that at issue in the main proceedings, under which, following the judicial annulment of a decision refusing to issue a residence card of a family member of a Union citizen, the competent national authority is automatically allowed the full period of six months provided for in Article 10(1) of Directive 2004/38.

58 In that regard, it should be noted that Directive 2004/38 does not contain any provisions concerning the effects of the judicial annulment of decisions adopted by competent national authorities refusing to issue a residence card of a family member of a Union citizen, and in particular the issue of what time period those authorities have for the purposes of adopting a new decision following such an annulment.

59 Thus, according to the Court's settled case-law, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish them in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, judgments of 17 March 2016, *Bensada Benallal*, C-161/15, EU:C:2016:175, paragraph 24, and of 13 December 2017, *El Hassani*, C-403/16, EU:C:2017:960, paragraph 26).

60 In the case in the main proceedings, the only issue is that of the principle of effectiveness.

61 The referring court cites national case-law pursuant to which the judicial annulment of a decision taken by an administrative authority within a mandatory time period automatically opens the way, from the notification of the annulment judgment, to the full period of six months in which that authority has to decide. Thus, pursuant to that case-law, the competent national authority had, following the judicial annulment of its initial decision, a new period of six months on the basis of Article 10(1) of Directive 2004/38 in which to respond to Mr Diallo's application for a residence card of a family member of a Union citizen.

62 Against that background, the automatic opening of a new period of six months following the judicial annulment of the competent national authority's initial decision appears to be of such a nature as to render excessively difficult the exercise of the right of the family member of a Union citizen to obtain a decision on his application for a residence card on the basis of Article 10(1) of Directive 2004/38.

63 In the first place, as recalled in paragraph 40 of the present judgment, the administrative procedure instituted in Article 10(1) of Directive 2004/38 is intended to verify the individual situation of third-country nationals in the light of the provisions of EU law within a mandatory time period of six months. In particular, national competent authorities must only verify, within that period, whether the third-country national is in a position to prove, through the submission of the documents stated in Article 10(2) of that directive, that he comes within the scope of the concept of 'family member' of a Union citizen, within the meaning of Directive 2004/38, in order to benefit from the residence card.

64 In the second place, it is apparent from the settled case-law of the Court that the purpose of Directive 2004/38 is to facilitate the exercise of the primary and individual right to move and reside freely within the territory of the Member States which is conferred directly on citizens of the Union by Article 21(1) TFEU. Recital 5 of the directive states that that right should, if it is to be exercised

under objective conditions of dignity, be also granted to the family members of those citizens, irrespective of nationality (judgment of 14 November 2017 *Lounes*, C-165/16, EU:C:2017:862, paragraph 31 and the case-law cited).

65 That purpose requires that a third-country national who submits proof that he comes within the scope of the concept of ‘family member’ of a Union citizen, within the meaning of Directive 2004/38, be issued with a residence card certifying that status at the earliest opportunity.

66 First, as noted in essence by the European Commission, the declaratory nature of the residence card allows the third-country national, who remains in a situation of legal uncertainty concerning the legitimacy of his residence, to certify, in so far as the material conditions required for the purposes of obtaining his right of residence are met, the existence of his derivative right of residence, facilitating both the exercise of that right and his integration in the host Member State.

67 Secondly, it should be noted that, in accordance with Article 5(2) of Directive 2004/38, only the possession of a valid residence card is to exempt the family members of a Union citizen, who are not nationals of a Member State, from the obligation to obtain a visa to enter the territory of the Member States. As is apparent from recital 8 of that directive, that exemption aims to facilitate the free movement of third-country nationals who are family members of a Union citizen (judgment of 18 December 2014, *McCarthy and Others*, C-202/13, EU:C:2014:2450, paragraphs 40 and 41).

68 Consequently, the automatic opening of a new period of six months, following the judicial annulment of a decision refusing to issue a residence card, appears disproportionate in the light of the ultimate purpose of the administrative procedure referred to in Article 10(1) of Directive 2004/38 and the objectives of that directive.

69 It follows that the principle of effectiveness and the objective of rapid processing of applications inherent to Directive 2004/38 preclude national authorities automatically being allowed a new period of six months following the judicial annulment of an initial decision refusing to issue a residence card. They are required to adopt a new decision within a reasonable period of time, which cannot, in any case, exceed the period referred to in Article 10(1) of Directive 2004/38.

70 In light of all the foregoing considerations, the answer to the third and fourth questions is that EU law must be interpreted as precluding national case-law, such as that at issue in the main proceedings, under which, following the judicial annulment of a decision refusing to issue a residence card of a family member of a Union citizen, the competent national authority automatically regains the full period of six months referred to in Article 10(1) of Directive 2004/38.

Costs

71 Since these proceedings are, for the parties in 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 (First Chamber) hereby rules:

1. Article 10(1) 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 the decision on the application for a residence card of a family member of a Union citizen must be adopted and notified within the period of six months laid down in that provision.

2. Directive 2004/38 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which requires competent national authorities to issue automatically a residence card of a family member of a European Union citizen to the person concerned, where the period of six months, referred to in Article 10(1) of Directive 2004/38, is exceeded, without finding, beforehand, that the person concerned actually meets the conditions for residing in the host Member State in accordance with EU law.

3. EU law must be interpreted as precluding national case-law, such as that at issue in the main proceedings, under which, following the judicial annulment of a decision refusing to issue a residence card of a family member of a Union citizen, the competent national authority automatically regains the full period of six months referred to in Article 10(1) of Directive 2004/38.

[Signatures]

* Language of the case: French.
