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Press and Information

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Judgment of the Court of Justice in Case C-127/08

Metock and Others v Minister for Justice, Equality and Law Reform

A NON-COMMUNITY SPOUSE OF A CITIZEN OF THE UNION CAN MOVE AND RESIDE WITH THAT CITIZEN IN THE UNION WITHOUT HAVING PREVIOUSLY BEEN LAWFULLY RESIDENT IN A MEMBER STATE

The right of a national of a non-member country who is a family member of a Union citizen to accompany or join that citizen cannot be made conditional on prior lawful residence in another Member State

Under the Directive on free movement of Union citizens¹, all citizens have the right to move and reside in the territory of another Member State as workers or students or if they have comprehensive sickness insurance and sufficient funds not to become a burden on the social assistance system. The family members of a citizen of the European Union have the right to move and reside in the Member States with that citizen. They can enter a Member State if they have an entry visa or residence card issued by a Member State.

The Irish legislation transposing that directive provides that a national of a third-country who is a family member of a Union citizen may reside with or join that citizen in Ireland only if he is already lawfully resident in another Member State.

The question of the compatibility of the Irish legislation with the directive was raised in four cases pending before the High Court of Ireland. In each of those cases a third-country national arrived in Ireland and applied for asylum. In each case the application was refused. While resident in Ireland those four persons married citizens of the Union who did not have Irish nationality but were resident in Ireland. None of the marriages was a marriage of convenience.

After the marriage, each of the non-Community spouses applied for a residence card as the spouse of a Union citizen. The applications were refused by the Minister for Justice on the ground that the spouse did not satisfy the condition of prior lawful residence in another Member State.

Actions were brought against those decisions in the High Court, which asks the Court of Justice whether such a condition of prior lawful residence in another Member State is compatible with

¹ 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 (OJ 2004 L 158, p. 77).

the directive and whether the circumstances of the marriage and the way in which the non-Community spouse of a Union citizen entered the Member State concerned have consequences for the application of the directive.

The Court of Justice finds that, **as regards family members of a Union citizen, the application of the directive is not conditional on their having previously resided in a Member State.** The directive applies 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 who accompany them or join them in that Member State. The definition of family members in the directive does not distinguish according to whether or not they have already resided lawfully in another Member State. That interpretation is confirmed by several articles of the directive and supported by the case-law of the Court.

The Court considers that its judgment in the *Akrich* case,² in which it ruled that, in order to benefit from the rights of entry into and residence in a Member State, the non-Community spouse of a Union citizen must be lawfully resident in a Member State when he moves to another Member State in the company of a Union citizen, must be reconsidered. The benefit of such rights cannot depend on prior lawful residence of the spouse in another Member State.

The Court emphasises that, if Union citizens were not allowed to lead a normal family life in the host Member State, the exercise of the freedoms they are guaranteed by the Treaty would be seriously obstructed, since they would be discouraged from exercising their rights of entry into and residence in that Member State.

In reply to the argument of the Minister for Justice and of several Member States that to interpret the directive in the fashion adopted by the Court would have serious consequences by bringing about a great increase in the number of persons able to benefit from a right of residence in the Community, the Court answers that only the family members of a Union citizen who has exercised his right of freedom of movement can benefit from the rights of entry and residence under the directive. Moreover, the Member States may refuse entry and residence on grounds of public policy, public security or public health, the refusal being based on an individual examination of the particular case. It adds that the Member States may also refuse, terminate or withdraw any right conferred by the directive in the case of abuse of rights or fraud, such as marriages of convenience.

Finally, the Court holds that **a non-Community spouse of a Union citizen** who accompanies or joins that citizen **can benefit from the directive, irrespective of when and where their marriage took place and of how that spouse entered the host Member State.**

The Court states that the directive does not require that the Union citizen must already have founded a family at the time when he moves, in order for his family members who are nationals of non-member countries to be able to enjoy the rights established by the directive. The Court further considers that it makes no difference whether nationals of non-member countries who are family members of a Union citizen have entered the host Member State before or after becoming family members of that citizen; the host Member State is, however, entitled to impose penalties, in compliance with the directive, for entry into and residence in its territory in breach of the national rules on immigration.

² Case C-109/01 *Akrich*, judgment of 23 September 2003 (see also press release 76/03, <http://curia.europa.eu/en/actu/communiqués/cp03/aff/cp0376en.htm>).

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE EN ES FR IT NL PL

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-127/08>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

*For further information, please contact Christopher Fretwell
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*

*Pictures of the delivery of the judgment are available on Ebs "Europe by Satellite",
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or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956*