Residence rights of third-country nationals

Findings of the Court of Justice of the European Union

The CJEU was asked to answer the following question: does European Union law give a parent who has parental responsibility and is a third-country national, for the purpose of maintaining regular personal relations and direct parental contact, a right to remain in the Member State of origin of his child who is a Union citizen, to be documented by a "residence card of a family member of a Union citizen", if the child moves from there to another Member State in exercise of the right of freedom of movement?

To answer the question referred to it, The Court first observed that Mr. Iida (Mr. Koji in the case study) would be eligible to obtain a long-term resident status on the basis of Directive 2003/109, had he not voluntarily withdrawn his application for it. It then proceeded to interpret the provisions of Directive 2004/28 in order to establish whether Mr. Iida's case falls under its scope. On the notion of dependency, the Court iterated its settled case law that the status of 'dependent' family member of a Union citizen holding a right of residence is the result of a factual situation characterised by the fact that material support for the family member is provided by the holder of the right of residence, so that, when the converse situation occurs and the holder of the right of residence is dependent on a third-country national, the third-country national cannot rely on being a 'dependent' relative in the ascending line of that right-holder, within the meaning of Directive 2004/38, with a view to having the benefit of a right of residence in the host Member State. It, thus, held that the claimant in the main proceedings cannot be regarded as a 'family member' of his daughter within the meaning of Article 2(2) of Directive 2004/38.

In the second place, as regards the relationship between the claimant in the main proceedings and his spouse, the Court observed that the marital relationship cannot be regarded as dissolved as long as it has not been terminated by the competent authority, and that is not the case where the spouses merely live separately, even if they intend to divorce at a later date, so that the spouse does not necessarily have to live permanently with the Union citizen in order to hold a derived right of residence. In the present case, the marriage of Mr and Mrs Iida has not been dissolved by the competent authority, so that Mr Iida may be regarded as a family member of his spouse within the meaning of that provision of Directive 2004/38. However, while he may be regarded as a 'family member' of his spouse, he cannot be classified as a 'beneficiary' of that directive, as Article 3(1) of the directive requires that the family member of the Union citizen moving to or residing in a Member State other than that of which he is a national should accompany or join him. Consequently, since Mr Iida neither accompanied nor joined in the host Member State the member of his family who is a Union citizen who exercised her right of freedom of movement, he cannot be granted a right of residence on the basis of Directive 2004/38.

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Finally, the Court found no autonomous rights conferred on Mr Iida by the Treaty provisions on citizenship of the Union.

The Court concluded that in those circumstances, the German authorities' refusal to grant Mr Iida a 'residence card of a family member of a Union citizen' does not fall within the implementation of European Union law within the meaning of Article 51 of the Charter, so that its conformity with fundamental rights cannot be examined by reference to the rights established by the Charter. In the light of the foregoing, the answer to the referring court's question was that, outside the situations governed by Directive 2004/38 and where there is no other connection with the provisions on citizenship of European Union law, a third-country national cannot claim a right of residence derived from a Union citizen.

See: *Yoshikazu Iida v. Stadt Ulm,* Case C-40/11, Judgement of 8.11.2012.