



**A non-EU national may benefit from a right of residence in the Member State in which his EU citizen family member resided before acquiring the nationality of that Member State in addition to her nationality of origin**

*The conditions for the grant of that right of residence must not be stricter than those laid down by the free movement directive*

Mr Toufik Lounes, an Algerian national, entered the UK in 2010 on a six-month visitor visa and then overstayed illegally. Ms Ormazabal, a Spanish national, moved to the UK as a student in 1996. She has been working there full time since 2004 and resides there. She became a naturalised British citizen in 2009 and also retained her Spanish nationality.

In 2014, Mr Lounes and Ms Ormazabal married. Following their marriage, Mr Lounes applied for the issue of a residence card as a family member of an EEA (European Economic Area) national.

By letter of 22 May 2014, the Secretary of State for the Home Department informed Mr Lounes that his application had been refused. The letter stated that, under the UK legislation transposing the free movement directive,<sup>1</sup> Ms Ormazabal had ceased to be regarded as an 'EEA national' following her acquisition of British citizenship. Mr Lounes could not therefore claim a residence card as a family member of an EEA national.

Mr Lounes brought a claim before the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), against the decision of 22 May 2014. The High Court has doubts as to the compatibility of that decision and the UK legislation with EU law and has referred a question on that issue to the Court of Justice.

In today's judgment, the Court observes first of all that the directive does not confer any autonomous right on family members of an EU citizen who are non-EU nationals, but only rights derived from the rights which the EU citizen concerned enjoys as a result of having exercised his freedom of movement.

Next, the Court notes that, under the directive, EU citizens who move to or reside in a 'Member State other than that of which they are a national', and their family members who accompany or join them, are beneficiaries of the rights conferred by the directive.<sup>2</sup> The Court also points out that the directive, which lays down the conditions governing the exercise of the right of EU citizens to move and reside freely within the territory of the Member States, is not intended to govern the residence of an EU citizen in the Member State of which he is a national, since, under a principle of international law, he enjoys an unconditional right of residence there. Accordingly, the directive governs only the conditions determining whether an EU citizen can enter and reside in Member States other than that of which he is a national and thus does not confer a derived right of residence on non-EU nationals, family members of an EU citizen, in the Member State of which that citizen is a national.

<sup>1</sup> 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).

<sup>2</sup> See Article 3(1) of Directive 2004/38.

In the present case it is undisputed that Ms Ormazabal exercised her freedom of movement when she left Spain to move to the UK in 1996; nor is it disputed that she was a 'beneficiary' of the directive until she acquired British citizenship. The Court points out, however, that, since then, she has been living in one of the Member States of which she is a national and, in accordance with international law, has an unconditional right of residence there.

The Court thus holds that since **Ms Ormazabal acquired British citizenship, the directive has ceased to govern her residence in the UK and no longer applies to her situation.** That conclusion is not called in question by the fact that Ms Ormazabal has exercised her freedom of movement by going to the UK and residing there or by the fact that she has continued to hold Spanish nationality in addition to British citizenship, given that, since she acquired British citizenship, Ms Ormazabal has not been residing in a 'Member State other than that of which [she is] a national', as referred to in the directive, and is therefore no longer a 'beneficiary' for the purposes of that directive. **Consequently, her spouse, Mr Lounes, cannot benefit from a derived right of residence in the UK on the basis of the directive.**

However, the Court considers that it is necessary to determine whether Mr Lounes can be accorded a **derived right of residence in the UK on the basis of Article 21(1) TFEU**, which provides that every citizen of the EU has the right to move and reside freely within the territory of the Member States. In that regard, the Court recalls that **a non-EU national, a family member of the EU citizen, may, in certain cases, be eligible for a derived right of residence based on Article 21(1) TFEU where the grant of such a right is necessary to ensure the effective exercise, by the EU citizen concerned, of his freedom of movement and of the rights which Article 21(1) TFEU affords him.**

**The Court states that, if the rights conferred on EU citizens by Article 21(1) TFEU — in particular those citizens' right to lead a normal family life, together with their family members, in the host Member State — are to be effective, citizens, in a situation such as Ms Ormazabal's, must be able to continue to enjoy that right in the host Member State, after they have acquired the nationality of that Member State in addition to their nationality of origin and, in particular, must be able to build a family life with their third-country-national spouse, by means of the grant of a derived right of residence to that spouse.**

The Court considers that an interpretation to the contrary would amount to treating Ms Ormazabal in the same way as a British citizen who has never left the UK, disregarding the fact that she has exercised her freedom of movement by settling there and that she has retained her nationality of origin. Moreover, it would be contrary to the logic of gradual integration in the host Member State that is inherent in Article 21(1) TFEU to hold that EU citizens in Ms Ormazabal's situation are to be deprived of the right to a normal family life in the host Member State because they have sought, by becoming naturalised in that Member State, to become more deeply integrated in that State.

Accordingly, the Court holds that **a non-EU national in Mr Lounes' situation is eligible for a derived right of residence under Article 21(1) TFEU, on conditions which must not be stricter than those provided for by the directive for the grant of such a right to a third-country national who is a family member of an EU citizen who has exercised his right of freedom of movement** by settling in a Member State other than the Member State of which he is a national.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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