



EU citizens who have never exercised their right of free movement cannot invoke Union citizenship to regularise the residence of their non-EU spouse

Where such persons are not deprived of their right to move and reside within the territory of the Member States, their situation has no connection with European Union law

European Union law allows the spouse of a national of a Member State residing legally in another Member State to remain with his spouse even if that spouse is not a national of an EU Member State.

Shirley McCarthy, a national of the United Kingdom, is also an Irish national. She was born in the United Kingdom and has always resided there, without ever having exercised her right to move and reside freely within the territory of other EU Member States.

Following her marriage to a Jamaican national, Mrs McCarthy applied for an Irish passport for the first time and obtained it. She then applied to the British authorities for a residence permit, as an Irish national wishing to reside in the United Kingdom under European Union law. Her husband applied for a residence document as the spouse of a Union citizen. Those applications were refused on the ground that Mrs McCarthy could not base her residence on European Union law and invoke that law to regularise the residence of her spouse, since she had never exercised her right to move and reside in Member States other than the United Kingdom.

The Supreme Court of the United Kingdom, before which the case was brought, asked the Court of Justice whether Mrs McCarthy can also invoke the rules of European Union law designed to facilitate the movement of persons within the territory of the Member States.

In its judgment today, the Court states, first, that the directive relating to freedom of movement for persons¹ determines how and under what conditions European citizens can exercise their right to freedom of movement within the territory of the Member States. Accordingly, the directive concerns the travel or residence of a person in a Member State other than that of which he is a national.

In this regard, the Court recalls that under a principle of international law, reaffirmed in the European Convention on Human Rights², Union citizens residing in the Member State of which they are a national – such as Mrs McCarthy – enjoy an unconditional right of residence in that State. The Court therefore finds that the directive cannot apply to such persons.

Similarly, the Court notes that the fact that a Union citizen is a national of more than one Member State does not mean that he has made use of his right of freedom of movement. Thus, the Court finds that **the directive is not applicable to Mrs McCarthy's situation**. With regard to Mrs McCarthy's husband, the Court finds that as he is not the spouse of a national of a Member State

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 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 corrigendum OJ 2004 L 229, p. 35).

² European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

who has exercised her right to freedom of movement, he also cannot benefit from the rights conferred by the directive.

The Court then recalls that a person – such as Mrs McCarthy – who is a national of at least one Member State enjoys the status of a Union citizen and may, therefore, rely on the rights pertaining to that status, including against her Member State of origin, in particular the right to move and reside within the territory of the Member States. However, the failure by the national authorities to take into account the Irish nationality of Mrs McCarthy for the purposes of granting her a right of residence in the United Kingdom in no way affects her right to remain in the United Kingdom or to move and reside freely within the territory of the Member States. Likewise, the national decision does not have the effect of depriving Mrs McCarthy of the genuine enjoyment of the substance of the other rights associated with her status as a Union citizen.

Consequently, the Court rules that, in the absence of national measures that have the effect of depriving her of the genuine enjoyment of the substance of the rights arising by virtue of her status as a Union citizen or of impeding the exercise of her right to move and reside freely within the territory of the Member States, the situation of Mrs McCarthy has no connection with European Union law and is covered exclusively by national law. In these circumstances, **Mrs McCarthy cannot base her residence in the United Kingdom on rights associated with European citizenship.**

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.

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

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355