



In Advocate General Bot's opinion, periods of residence in a host Member State under its national law alone must be taken into account in calculating the length of the residence of a citizen of the Union for the purposes of the acquisition of the right of permanent residence in that State

Such periods of residence before the accession to the Union of a citizen's State of origin must also be taken into account in the calculation for the purposes of the acquisition of that right

The directive on the freedom of movement of persons¹ determines how and under what conditions European citizens may exercise their right to freedom of movement and residence within the territory of the Member States.

It put in place a three-tier system, each tier depending on the length of residence in the host Member State. First of all, it provides that a citizen of the Union has the right to reside in the territory of the host Member State for up to three months without other special conditions. Second, it provides that the acquisition of the right of residence for more than three months is subject to certain conditions. To qualify for that right, a citizen of the Union must, in particular, be a worker or self-employed in the host Member State or have, for himself and the members of his family, sufficient resources not to become a burden on the social assistance system of that State and comprehensive sickness insurance cover in that State. Finally, the directive establishes a right of permanent residence, which is not subject to the preceding conditions, for citizens of the Union who have resided legally in the host Member State for a continuous period of five years.

Mr Ziolkowski and Ms Szeja, Polish nationals, arrived in Germany, in 1988 and 1989 respectively, before Poland's accession to the Union. Under German law, they obtained the right to reside there on humanitarian grounds. Their right to reside was extended regularly on the same grounds. After Poland's accession to the Union, they applied to the competent German authorities for the right of permanent residence. Following its refusal on the ground that they had no work and were unable to prove that they had sufficient resources of their own, they brought actions before the competent German courts.

The Bundesverwaltungsgericht (Federal Administrative Court, Germany), before which the proceedings are pending, has asked the Court of Justice, in essence, whether periods of residence in the host Member State under national law alone, including before Poland's accession to the Union, should be regarded as periods of legal residence, as defined in the law of the Union, and thus be taken into account in calculating the length of residence of a Union citizen for the purposes of the acquisition of the right of permanent residence.

First of all, Advocate General Bot notes that the provisions laid down by the directive on the freedom of movement of persons do not detract from more favourable national provisions. That is particularly so in the case of a right of residence granted on humanitarian grounds, without the level of the relevant person's resources being taken into account. Therefore, it seems that, by not

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 corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

specifying that those more favourable national provisions are excluded from the mechanism for acquiring the right of permanent residence, the directive has in fact, perhaps implicitly but nonetheless necessarily, validated them under the mechanism in question.

Next, the Advocate General considers that the directive's provisions cannot be interpreted restrictively and should not, in any case, be deprived of their practical effect. The intention of the Union's legislature is to achieve, for Union citizens who fulfil the conditions for acquiring the right of permanent residence, full equality with national citizens. It starts from the principle that, after a sufficiently long period of residence in the host Member State, a citizen of the Union will have developed close ties with that state and been integrated in its society. It is indisputable that such is the situation that arises when the links between an individual and the host Member State are engendered within the framework of a relationship of human solidarity, which is the case here.

The Advocate General also states that the degree of integration of Union citizens does not depend on whether their right of residence is derived from the law of the Union or national law. In addition, the degree of integration no longer depends on their material situation since that has been taken into account and managed by the host Member State for a period longer than that fixed by the directive (i.e. 5 years), which was a clear manifestation of their integration.

Finally, M. Bot considers that the directive on the freedom of movement of persons enacts rules which are binding on the Member States and which, once satisfied, cannot preclude recognition of the right of permanent residence. At the same time, and in view of its purpose, that directive does not prevent the States from enacting their own more favourable rules, which are more likely to accelerate the process of integration and social cohesion.

Consequently, the Advocate General suggests that the Court should interpret the directive as meaning that **periods of residence in a host Member State under its national law alone must be taken into account in calculating the length of the residence of a citizen of the Union for the purposes of the acquisition of the right of permanent residence in that State.**

Finally, the Court is invited to reply that such **periods of residence by European citizens before their State of origin accedes to the Union must also be taken into account in the calculation for the purposes of the acquisition of the right of permanent residence.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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

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