



Press and Information

Court of Justice of the European Union

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Judgment in Case C-40/11
Yoshikazu Iida v Stadt Ulm

A third-country national who resides legally in the Member State of origin of his daughter and his spouse, while they have moved to another Member State, cannot rely on their EU citizenship in order to base his right of residence on EU law

Mr Iida, a Japanese national, has been married to a German national since 1998, and has lived since 2005 in Ulm (Germany), where he has a permanent job. Their daughter was born in 2004 in the United States, and she has German, Japanese and American nationality. The spouses have since 2008 been separated in practice but not divorced, the wife having gone to live in Vienna (Austria) with her daughter. The spouses jointly exercise parental responsibility for their daughter. Thus Mr Iida visits his daughter in Vienna one weekend a month, and she spends most of her holidays with her father in Ulm. Mr Iida obtained a right of residence in Germany in connection with family reunion and, since his family moved, because of being employed. As extending his residence permit was a matter of discretion, Mr Iida applied for a residence card as a family member of an EU citizen on the basis of Directive 2004/38¹ on European citizenship, but the German authorities refused to grant him one.

The Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg) asks the Court of Justice whether EU law allows a third-country national exercising parental authority over his child, who is an EU citizen, to remain in the child's Member State of origin (Germany) in order to maintain regular personal relations, where the child has moved to another Member State (Austria).

The Court notes, first, that Mr Iida could in principle, on application and regardless of his family situation, be granted the status of long-term resident within the meaning of Directive 2003/109² on third-country nationals. He has resided legally in Germany for more than five years and appears to have sufficient resources to support himself and to have sickness insurance.

Next, the Court finds that Mr Iida cannot claim a right of residence as a family member of an EU citizen on the basis of Directive 2004/38. Under that directive, such a right presupposes that the direct relative in the ascending line is dependant on the child. Mr Iida does not satisfy that condition, as it is his daughter who is dependent on him.

Moreover, while Mr Iida may be regarded as a family member of his spouse, from whom he is separated but not divorced, he does not, however, satisfy the condition laid down by the directive of having accompanied or joined her in a Member State other than that of which she is a national.

The Court states, further, that Mr Iida cannot base a right of residence directly on the Treaty on the Functioning of the European Union by referring to the EU citizenship of his daughter or his spouse. In the circumstances of the present case, the refusal to grant him a right of residence derived from their status of EU citizen is not liable to deny them the genuine enjoyment of the substance of the

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

² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2003 L 16, p. 44).

rights associated with their status or to impede the exercise of their right to move and reside freely within the territory of the Member States.

The Court points out in this respect that Mr Iida has always lived in Germany in accordance with national law, without the absence of a right of residence under EU law having discouraged his daughter or his spouse from exercising their right of freedom of movement by moving to Austria. Moreover, even after their move, Mr Iida can be granted a right of residence in Germany on another legal basis, without it being necessary to rely on his daughter and his spouse's EU citizenship.

Finally, Mr Iida cannot rely on the Charter of Fundamental Rights of the European Union, which lays down a right to respect for private life and certain rights of the child. Since Mr Iida does not satisfy the conditions of Directive 2004/38 and has not applied for a right of residence as a long-term resident within the meaning of Directive 2003/109, his situation shows no connection with EU law, so that the Charter of Fundamental Rights of the European Union does not apply.

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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