Court of Justice of the European Union
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Press and Information

Judgments in Cases C-378/12 and C-400/12
Nnamdi Onuekwere v Secretary of State for the Home Department
Secretary of State for the Home Department v G.

Periods in prison cannot be taken into account for the purposes of the acquisition of a permanent residence permit or with a view to the grant of enhanced protection against expulsion

Similarly, periods of imprisonment, in principle, interrupt the continuity of the requisite periods for granting those advantages

The directive on the right of free movement and residence[1] allows EU citizens, without any conditions or any formalities other than the requirement to hold a travel document, to go to and reside in a Member State other than that of which they are nationals for a maximum duration of three months. Nevertheless, where they pursue an occupational activity or have sufficient resources to meet their needs and have comprehensive sickness insurance (for example as students or pensioners), they may stay in that other Member State for a longer period. In such a case, their family members, whether they are EU citizens or not, may also stay with them in that State provided that their presence does not constitute a burden on the social assistance system of the host Member State and they are covered by comprehensive sickness insurance.

EU citizens who have resided legally for a continuous period of five years in the host Member State acquire the right of permanent residence there. That right is not subject to the conditions required to be able to stay in the host Member State for a period of longer than three months (pursuit of an occupational activity, pursuit of studies etc.). Their family members who are not nationals of a Member State and have legally resided with them in the host Member State for a continuous period of five years also acquire the right of permanent residence.

In that context, the host Member State may not take an expulsion decision against an EU citizen or his family members, irrespective of nationality, who have acquired the right of permanent residence on its territory, except on serious grounds of public policy or public security. Similarly, an expulsion decision may not be taken against an EU citizen who has resided in the host Member State for the previous 10 years unless imperative grounds of public security, as defined by that Member State, justify it.

Case C-378/12

By his marriage to an Irish citizen who has exercised her right of freedom of movement and residence in the United Kingdom, Mr Onuekwere, a Nigerian national, obtained a residence permit valid for five years in that Member State. During his residence in the UK as a family member of an EU citizen, Mr Onuekwere was sentenced on several occasions by the UK courts for various offences and was imprisoned for a total period of three years and three months.

Mr Onuekwere subsequently requested a permanent residence card, alleging in particular that, as his wife had acquired the right of permanent residence, he also had to be granted that right. In addition, he claims that the total duration of his residence in the UK (periods in prison included) far

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the EU 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).

exceeds the duration of five years required for the grant of that right. Moreover, he points out that, even if the periods spent in prison are not counted for that purpose, the sum of the periods not including the stays in prison is greater than five years.

His request for a permanent residence card having been dismissed, Mr Onuekwere brought an action before the Upper Tribunal (Immigration and Asylum Chamber), London (United Kingdom). That tribunal is asking the Court of Justice whether periods in prison and periods of a duration of less than five years which precede and follow the imprisonment of an applicant may be taken into account for the purposes of the acquisition of a permanent residence permit.

In its judgment delivered today, the Court states, first, that a third-country national, who is a family member of a Union citizen who has exercised his right of free movement and residence, may only count the periods which he has spent with that citizen for the purposes of the acquisition of a right of permanent residence. As a consequence, **the periods during which he has not resided with that citizen because of his imprisonment in the host Member State may not be taken into account for that purpose.**

Furthermore, the Court states that the EU legislature made the acquisition of the right of permanent residence subject to the integration of the person concerned in the host Member State. Such integration is based not only on territorial and temporal factors but also on qualitative elements, relating to the level of integration in the host Member State. In that regard, the Court points out that the imposition of a prison sentence by the national court is such as to show the non-compliance by the person concerned with the values expressed by the society of the host Member State in its criminal law. Accordingly, the taking into consideration of periods of imprisonment for the purposes of the acquisition of the right of permanent residence would clearly be contrary to the aim pursued by the directive in establishing that right of residence.

Finally, for the same reasons, the Court finds that **the continuity of residence of five years is interrupted by periods of imprisonment in the host Member State.** As a consequence, the periods which precede and follow the periods of imprisonment may not be added up to reach the minimum period of five years required for the acquisition of a permanent residence permit.

Case C-400/12

Ms G., a Portuguese national, has resided in the UK since 1998, acquiring a right of permanent residence in 2003. In 2009, she was sentenced by the UK courts to 21 months' imprisonment for having abused one of her children. Furthermore, while she was still in prison, the United Kingdom authorities ordered that she be deported from the UK on grounds of public policy and public security.

Ms G. contested the expulsion order before the UK courts, contending in particular that, having resided in the UK for more than 10 years, she had to benefit from the highest level of protection which EU law reserves to EU citizens as regards expulsion. The Upper Tribunal (Immigration and Asylum Chamber), London, before which the dispute has been brought, is asking the Court whether, despite her imprisonment, Ms G. may benefit from that enhanced protection against expulsion.

In its judgment, the Court states, first, that, unlike the requisite period for acquiring a right of permanent residence, which begins when the person concerned commences lawful residence in the host Member State, **the 10-year period of residence necessary for the grant of the enhanced protection against expulsion must be calculated by counting back from the date of the decision ordering that person's expulsion.** Furthermore, the Court points out that that period of residence must, in principle, be continuous.

Secondly, as regards the link between the integration of a person in the society of the host Member State and his imprisonment, the Court finds that, for the same reasons as those put forward in the judgment delivered in Case C-378/12, periods of imprisonment cannot be taken into consideration for the purposes of the calculation of the 10-year period of residence.

Finally, the Court states that periods in prison, in principle, interrupt the continuity of the period of residence necessary for the grant of the enhanced protection. Nevertheless, the Court points out that, in order to determine the extent to which the non-continuous nature of the period of residence prevents the person concerned from enjoying enhanced protection, an overall assessment must be made of his situation. As part of that overall assessment required for determining whether the integrating links between the person concerned and the host Member State have been broken, the national authorities may take into account the relevant considerations of his imprisonment. Similarly, in the context of that overall assessment, the national authorities may take into consideration the fact that the person concerned, such as Ms G., has resided in the host Member State during the 10 years prior to imprisonment.

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.

The full text of the judgments (C-378/12 and C-400/12) is published on the CURIA website on the day of delivery.

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