



A family member of an EU citizen who is not a national of a Member State but who holds a permanent residence card shall be exempt from the visa requirement for entry into the territory of the Member States.

Furthermore, this card is to be considered as proof, in itself, of the holder's family member status

On 9 October 2017, the police at Liszt Ferenc Airport in Budapest (Hungary) screened passengers on a Ryanair-operated flight from London (UK). On that occasion, it was found that a passenger of Ukrainian nationality who held a non-biometric passport and a valid permanent residence card issued by the UK in accordance with the Directive on the right of citizens of the EU and their family members to move and reside freely within the territory of the Member States,¹ did not have a visa.

Considering that, in the absence of a visa, this passenger did not have all the travel documents required to enter Hungarian territory, the police did not authorise him to do so and asked Ryanair to bring him back to London. In addition, it considered that Ryanair had not taken the measures incumbent on it, as a carrier, to ensure that the passenger was in possession of the required travel documents and, for that reason, imposed a fine of €3,000 on that company.

Ryanair challenges, before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Budapest, Hungary), the legality of the administrative decision by which the fine in question was imposed on it. It argues, in particular, that the passenger in question was authorised to enter Hungarian territory without a visa since he had a permanent residence card issued by the UK pursuant to the directive.

In those circumstances, the Fővárosi Közigazgatási és Munkaügyi Bíróság asks the Court of Justice, in particular, whether holders of a permanent residence card are exempt, under the directive, from the visa requirement and whether the benefit of that exemption extends to nationals of non-member States where such a residence card has been issued to them by a Member State which, like the UK, was not part of the Schengen area at the time of the facts giving rise to the case. In addition, the Hungarian court wishes to know whether this residence card is sufficient to establish the status of family member of its holder or whether it is necessary to submit other documents to establish such status.

In today's judgment, the Court finds, first of all, that, although the provision of the directive relating to exemption from the visa requirement² expressly grants that exemption only to holders of a residence card for a family member of an EU citizen, that circumstance is not, in itself, such as to establish the intention of the EU legislature to exclude from the benefit of such an exemption the family members of an EU citizen who are in possession of a permanent residence card.

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).

² Article 5(2) of the directive.

It is apparent from an overall analysis of the directive³ that family members of an EU citizen who have already obtained a residence card should benefit from the exemption in question, the EU legislator having intended to grant the benefit of this exemption to all family members of an EU citizen who hold a residence card, irrespective of the type of card.

In that regard, the Court points out that the permanent residence card may be issued only to persons who have already obtained a residence card as a family member of an EU citizen and lawfully resided for an uninterrupted period of five years with the EU citizen concerned in the host Member State, benefiting during that period from the visa exemption attached to the possession of such a card.

Furthermore, the Court points out that the directive is intended to ensure the gradual integration of EU citizens and their family members who are not nationals of a Member State into the society of the host Member State. The achievement of that objective would be jeopardised if the acquisition of the right of permanent residence by the family members of an EU citizen resulted in the loss of the visa exemption they enjoyed before acquiring that right of permanent residence.

Consequently, the Court holds that **a family member of an EU citizen who is not a national of a Member State, but who holds a permanent residence card, is exempt from the requirement to obtain a visa in order to enter the territory of the Member States.**

The Court goes on to note that the provisions applicable to the Schengen area expressly state that they do not affect the freedom of movement of EU citizens and their family members. In that regard, the Court finds that the directive applies without distinction to all the Member States, whether or not they form part of the Schengen area, and that its provision on exemption from the visa requirement makes no specific reference to that area.

It follows that **the benefit of the visa exemption provided for by the directive extends to family members of an EU citizen who are in possession of a residence card or permanent residence card both when such a card has been issued to them by a Member State outside the Schengen area and when it has been issued by a Member State within that area.**

Finally, the Court finds that, under the directive, the Member States may issue a permanent residence card only to persons who have the status of family member of an EU citizen. Thus, the issue of such a card by a Member State implies that the Member State has necessarily verified, in advance, that the person concerned has that status. Consequently, a permanent residence card is such as to justify, in itself, that its holder is a family member of an EU citizen. As such, the holder of such a card has the right to enter the territory of a Member State without further verification or proof of his or her status as a family member of an EU citizen being necessary.

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 judgment is published on the CURIA website on the day of delivery.

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³ Recital 8 of the directive 2004/38.