

**Right of permanent residence - Article 7(1) and Article 16 of Directive 2004/38/EC –
Obligation to have sufficient resources not to become a burden on the social assistance
system – Union citizenship**

(Appellant against the State Secretary of Security and Justice)

The appellant, a foreign national of Turkish nationality, was issued a residence permit on 18 November 2010 for the purpose of staying in the Netherlands as a family member of a Union citizen on the basis of the relationship with his German partner, who died in Germany in 2011. The State Secretary rejected the application of 13 Augustus 2015 for a permanent right of residence as a Union citizen.

In appeal the appellant states that he obtained the right of permanent residence, as referred to in Article 16 of Directive 2004/38/EC, because he has 'sufficient resources' as referred to in Article 7(1). He argues that he has never needed to make use of the social assistance system and that he has always been able to provide for himself. He also declares that he has worked as an employee and as a self-employed person.

The Division considers that from the judgments of the ECJ of 16 July 2015, *Singh et al.*, *ECLI:EU:C:2015:476*, and 21 December 2011, *Ziolkowski and Szeja*, *ECLI:EU:C:2011:866*, read together with the communication from the Commission COM(2009)313, '*on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*', it follows that the foreign national, as a family member of a Union citizen, must have at least five years of sufficient means of subsistence to obtain the permanent right of residence.

The Division rules that the fact alone that the appellant has not made use of the social assistance system does not automatically mean that he has had sufficient means of subsistence. However, the fact that he has not made use of the social assistance system should have been taken into account in the assessment of the State Secretary.

The Appellant won the appeal.