



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-424/10 Tomas Ziolkowski v Land Berlin and
C-425/10 Barbara Szeja and Others v Land Berlin

A right of permanent residence may be acquired only through periods of residence which satisfy the conditions laid down by EU law

Periods of residence completed by a national of a non-Member State before the accession of that State to the EU must be taken into account in calculating the five-year qualifying period, provided they were completed in compliance with the conditions laid down by EU law

Mr Ziolkowski and Mrs Szeja, Polish nationals, arrived in Germany before the accession of Poland to the European Union – in 1988 and 1989 respectively – and were granted a right of residence on humanitarian grounds, which was duly extended in accordance with German law. In 2005, after the accession of Poland to the European Union, they applied for permanent residence in Germany under the Directive on free movement of persons¹, which was refused on the grounds that they were not in employment and were unable to prove that they had sufficient resources to support themselves. They challenged that refusal on the part of the German authorities before the competent national courts.

The Bundesverwaltungsgericht (Federal Administrative Court, Germany), before which the disputes were brought, asks the Court of Justice, in essence, whether periods of residence completed in the territory of the host Member State in compliance with national law alone may be regarded as periods of legal residence within the meaning of European Union law. The Court is also asked whether periods of residence completed by nationals of a non-Member State before the accession of that State to the European Union must be taken into account in calculating the five-year period of residence necessary for acquiring a right of permanent residence.

The Court interprets, first, **the term ‘legal residence’** in the Directive. It points out that the Directive does not give any guidance on how the terms ‘who have resided legally’ in the territory of the host Member State are to be understood. Similarly, the Directive does not contain any reference to national laws. It follows that those terms must be regarded as designating an autonomous concept of EU law, which must be interpreted in a uniform manner throughout the Member States.

The Court states that the meaning and scope of terms for which EU law provides no definition must be determined by considering, inter alia, the context in which they occur and the purposes of the rules of which they form part.

The Court points out that the Directive aims, inter alia, to promote the exercise of the right of European citizens to move and reside freely, subject to the restrictions laid down by EU law. The Directive sets out the conditions under which Union citizens and their family members may move and reside freely in the Member States and the conditions which they must satisfy in order to acquire the right of permanent residence. Moreover, the aim of the Directive is to remedy a sector-by-sector piecemeal approach to the right of permanent residence.

With regard to its overall context, the Directive introduces a three-level system, each level reflecting the duration of the period of residence in the host Member State, the final level

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

corresponding to the right of permanent residence, which was introduced for the first time by the Directive. In essence, that system reproduces the stages and conditions set out in the instruments of European Union law and case-law preceding the Directive. Thus, first, it provides that a Union citizen has the right to reside in the host Member State for a period of up to three months, subject only to the requirement to hold a valid identity card or passport. Next, in order to acquire a right of residence for a period of more than three months, it is necessary to satisfy certain conditions. In order to be granted that right, Union citizens must, inter alia, be workers or self-employed persons in the host Member State or have sufficient resources for themselves and their family members not to become a burden on the social assistance system of that State and have comprehensive sickness insurance cover in that State². Lastly, the Directive introduces a right of permanent residence for Union citizens who have resided legally for a continuous period of five years in the host Member State³.

With regard to the specific context of the Directive, under a number of its provisions the period of residence prior to the acquisition of the right of permanent residence must comply with conditions in keeping with the requirements of the Directive.

In the light of those objectives and the Directive's overall and specific context, the Court considers that, for the purpose of the acquisition of a right of permanent residence, the term 'legal residence' must be construed as a period of residence which complies with the conditions laid down in the Directive (namely, the person concerned must be a worker or self-employed person in the host Member State or have sufficient resources and sickness insurance cover for himself and his family members). Consequently, a period of residence which complies with the law of a Member State but does not satisfy those conditions cannot be regarded as a 'legal' period of residence within the meaning of the Directive concerning permanent residence.

The Court therefore finds that that term must be interpreted as meaning that **a Union citizen who has been resident for more than five years in the host Member State on the sole basis of the national law of that State cannot be regarded as having acquired the right of permanent residence if, during that period of residence, he did not satisfy the conditions laid down in the Directive.**

Second, the Court considers **whether periods of residence completed by a national of a non-Member State in the territory of a Member State before the accession of that non-Member State to the European Union must be taken into account in calculating the period required for the acquisition of a right of permanent residence.**

The Court states that the Act of Accession of a new Member State is based essentially on the general principle that the provisions of EU law apply immediately and in their entirety to that State, in the absence of express derogations in the transitional provisions.

As regards, in particular, the provisions on citizenship of the European Union, the Court has already held that they are applicable as soon as they enter into force and must be applied to the present effects of situations arising previously.

In the present case, the Court observes that there is no transitional provision in the Act of Accession concerning the application to Poland of the provisions on freedom of movement of persons, except for certain rules concerning freedom of movement for workers and freedom to provide services.

Consequently, the provisions on permanent residence can be relied upon by Union citizens and be applied to the present and future effects of situations arising before the accession of Poland to the EU.

The Court finds that **periods of residence completed by a national of a non-Member State in the territory of a Member State before the accession of the non-Member State to the**

² Article 7(1) of Directive 2004/38/EC.

³ Article 16(1) of Directive 2004/38/EC

European Union must, in the absence of specific provisions in the Act of Accession, be taken into account for the purpose of the acquisition of the right of permanent residence, provided those periods were completed in compliance with the requirements of the Directive.

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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