



Press and Information

Court of Justice of the European Union

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Judgment in Case C-218/14

Kuldip Singh and Others v Minister for Justice and Equality

A national of a third country who is married to an EU citizen residing in a Member State other than the citizen's own State can no longer enjoy a right of residence in that State where the EU citizen leaves that State before the commencement of divorce proceedings

In accordance with an EU directive,¹ where an EU citizen leaves the territory of a Member State other than his own (the host Member State), his family members who are third country nationals (i.e. who are not themselves EU citizens) lose their right of residence in that State. On the other hand, the directive provides that, in the event of divorce, the family members who are third country nationals retain their right of residence in the host Member State where the marriage has lasted for at least three years before the commencement of divorce proceedings, including at least one year in the host Member State, subject to certain conditions.

Three third country nationals (from India, Cameroon and Egypt) were married to EU citizens (from Latvia, Germany and Lithuania) and lived with them in Ireland for over four years. In all three cases the wife left her husband, left Ireland and sought a divorce in her own country (except for the German citizen, who petitioned for divorce in the United Kingdom). The Irish authorities took the view that, since the EU citizens had already left Ireland when the divorces were sought, the three foreign husbands no longer had a right of residence in Ireland. The Irish authorities argue that the right of residence of the three spouses ceased to be valid at the time when their wives ceased to exercise their right to reside in Ireland, even if the marriage had lasted for at least three years (including one year in Ireland). The three spouses challenged the decisions refusing the retention of their right of residence in Ireland.

The High Court of Ireland, which is hearing the cases, asks the Court of Justice whether the right of residence of the three foreign husbands in Ireland could be retained when the divorce took place **after** their wives had left the country.

In today's judgment the Court of Justice notes that, in order to enjoy a right of residence under Article 7(2) of the directive in the Member State in which an EU citizen is exercising his or her right to freedom of movement (the host Member State), third country nationals who are family member of that citizen must accompany or join the citizen in that State. It follows that if an EU citizen leaves the host Member State and settles in another Member State or in a third country, the foreign spouse no longer satisfies the conditions for enjoying a right of residence in the host Member State under that provision.

The Court observes that, where divorce proceedings are started and the marriage has lasted for at least three years before the commencement of the divorce proceedings, including at least one year in the host Member State, the foreign spouse may, subject to certain conditions, retain the right of residence in that State on the basis of Article 13(2) of the directive, both during the divorce

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

proceedings and after the decree of divorce, provided that at the date of commencement of those proceedings he or she was resident in that State as the spouse of an EU citizen accompanying or joining the citizen in that State. It follows that the EU citizen must reside in the host Member State, in accordance with Article 7(1) of the directive, up to the date on which divorce proceedings are commenced. Consequently, **if before the start of those proceedings the EU citizen leaves the host Member State in which his or her foreign spouse resides, the spouse's right of residence in that State cannot be retained under Article 13(2) of the directive.**

In the present case, the three spouses who were EU citizens left Ireland before the divorce proceedings had even started. The foreign husbands therefore lost their right of residence at the time of departure of their wives, and that right could not be revived subsequently at the time when the wives petitioned for divorce after their departure from Ireland.

The Court recalls, however, that in such a case national law may grant more extensive protection to nationals of third countries, so as to allow them none the less to continue to reside in the Member State concerned (which is what happened for the three husbands in the present case, as the Irish authorities granted them temporary permission to reside and work in Ireland).

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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