



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Cases C-165/14
Alfredo Rendón Marín v Administración del Estado and C-304/14 CS v
Secretary of State for the Home Department

According to Advocate General Szpunar, a non-EU national having sole care and control of a minor child who is a citizen of the EU may not be expelled from a Member State or be refused a residence permit simply because he has a criminal record

No deportation measure may be adopted unless it is proportionate and based on imperative reasons relating to public security and on the personal conduct of the non-EU national; this conduct must constitute a genuine, present and sufficiently serious threat

The FEU Treaty provides that every person holding the nationality of a Member State is a citizen of the EU and has the right to move and reside freely within the territory of the Member States.

Because of their criminal records, two third-country nationals were, respectively, refused a residence permit and served with a deportation order by the authorities of the Member State of residence and of nationality of their minor children of whom they have custody and who hold citizenship of the EU. Mr Rendón Marín is the father and sole guardian of a son of Spanish nationality and of a daughter of Polish nationality. The two children have always lived in Spain (Case C-164/14). CS, for her part, is the mother of a son of British nationality who lives with her in the UK and of whom she has sole care and control (Case C-304/14).

Members of the press should take note of the fact that Case C-304/14 was introduced to the Court of Justice as an anonymised procedure by the referring UK Court, which had issued an order of this kind so as to protect the interests of the child of CS.

The Tribunal Supremo (Supreme Court, Spain) and the Upper Tribunal (Immigration and Asylum Chamber), London (UK) have asked the Court of Justice what effect a criminal record may have on the recognition of a right of residence under EU law.

In today's Opinion, Advocate General Maciej Szpunar first of all emphasises that the Citizenship Directive¹ applies to the situation of Mr Rendón Marín and his daughter of Polish nationality, but not to the situation of Mr Rendón Marín and his son of Spanish nationality, or to that of CS and her son of British nationality. The directive applies to citizens of the EU and their family members moving to or residing in a Member State other than that of which they are nationals. Neither Mr Rendón Marín's children, Spanish and Polish nationals, nor CS's child, a British national, have crossed any border. According to the Advocate General, the directive is applicable only in that it permits Mr Rendón Marín to reside in Spain (the host Member State) with his Polish daughter (a child national of another Member State) of whom he actually has care and control.

The Advocate General takes the view that **the right of residence enjoyed by Mr Rendón Marín under the directive, thanks to his daughter, may not be limited by a provision of national law that automatically makes the grant of a residence permit conditional upon his having no criminal record in Spain or in the countries in which he has previously lived.** That automatic refusal is not, in fact, in keeping with the principle of proportionality, and it does not make it

¹Directive 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).

possible to establish whether the personal conduct of the individual concerned represents any current danger to public order or public security. **It is thus contrary to EU law for national legislation to provide that a third-country national, the parent of a minor citizen of the EU of whom he has care and control and who lives with him in the host State, is automatically to be refused a residence permit solely because he has a criminal record.**

In the light of the Court's case-law,² the Advocate General considers that Mr Rendón Marín's children and CS's child, because they hold the nationality of a Member State, possess the status of citizen of the EU, which gives them the right to move and reside freely throughout the territory of the EU. **Any limitation of that right falls, therefore, within the ambit of EU law, which precludes national measures the effect of which is to *deprive* citizens of the EU of the *genuine enjoyment* of the substance of the rights conferred by the Treaty.** In the cases under consideration, **the children could be obliged to go with their respective parents if the latter are expelled, given that they have been entrusted to the sole care of those parents. The children would then have to leave the territory of the EU, which would however frustrate the actual enjoyment of the substance of the rights conferred on them by their status as citizens of the EU.** In order to protect the interests of those children, parents finding themselves in that situation are given a derived right of residence. That right flows directly from the FEU Treaty. Here, the Advocate General applies by analogy the case-law on removal measures taken against *nationals of a Member State* convicted of criminal offences, it being understood that Mr Rendón Marín and CS are not themselves citizens of the EU, but non-EU nationals who are members of the family of a citizen of the EU. According to that case-law, the concepts of public order and public security must be interpreted strictly in the context of limitations of the right of residence. The Advocate General considers it unacceptable that, for reasons relating to public policy or public security, limitations of that right should differ, depending on whether the right flows from the Treaty or from the directive.

The Advocate General concludes therefrom that **it is contrary to the FEU Treaty for national legislation to require the automatic refusal of a residence permit for a third-country national, the parent of minor children who are citizens of the EU and of whom the parent has sole care and custody, on the grounds of the parent's criminal record, when the consequence of such a refusal is that the children will have to leave the territory of the EU.**

Lastly, the Advocate General has examined the public policy or public security exception invoked by the United Kingdom in order to justify the decision to deport CS. According to that decision, CS's serious criminal offence represented an obvious threat to the preservation of that Member State's social cohesion and of the values of its society, which is a legitimate interest. The Advocate General considers that **expulsion is, in principle, contrary to EU law but that, in exceptional circumstances, such a measure may be adopted**, provided that it observes the principle of proportionality and is based on the conduct of the person concerned (conduct that must constitute a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society) and on imperative reasons relating to public security.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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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²[C-200/02](#) Zhu and Chen, see also Press Release No. [84/04](#), [C-135/08](#) Rottmann, see also Press Release No. [15/10](#) and [C-34/09](#) Ruiz Zambrano, see also Press Release No. [16/11](#).

The full texts [C-165/14](#) & [C-304/14](#) of the Opinions are published on the CURIA website on the day of delivery.

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