



Press and Information

Court of Justice of the European Union

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Judgments in Case C-165/14

Alfredo Rendón Marín v Administración del Estado and Case C-304/14
Secretary of State for the Home Department v CS

EU law does not permit a national of a non-EU country who has the sole care of an EU citizen who is a minor to be automatically refused a residence permit or to be expelled from the territory of the European Union on the sole ground that he has a criminal record

In order to be capable of being adopted, an expulsion measure must be proportionate and founded on the personal conduct of the national of a non-EU country and that conduct must constitute a genuine, present and sufficiently serious threat adversely affecting one of the fundamental interests of the society of the host Member State

Because of their criminal records, two nationals of non-EU countries were, respectively, refused a residence permit and served with a deportation order by the authorities of the host Member State – the State of nationality of minor children of whom they have sole care and who possess citizenship of the Union. Alfredo Rendón Marín has sole care and custody of a son, who has Spanish nationality, and a daughter, who has Polish nationality. The two minor children have always resided in Spain. CS is the mother and sole carer of a child of British nationality who resides with her in the United Kingdom.

Members of the press should note that Case C-304/14 was brought before the Court of Justice anonymised by the referring United Kingdom tribunal, which had made an anonymity order so as to protect the interests of CS's child.

The Tribunal Supremo (Supreme Court of Spain) and the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom) asked the Court of Justice whether the existence of a criminal record may in itself justify refusal of a right of residence or expulsion in the case of a national of a non-EU country who is the sole carer of a minor who is an EU citizen.

By its judgments delivered today, the Court holds, first, that **EU law precludes national legislation under which a national of a non-EU country who has the sole care of a minor who is an EU citizen is automatically refused a residence permit, or must be expelled, on the sole ground that that national has a criminal record where the refusal or expulsion obliges the child to leave the territory of the European Union.**

The Court begins by explaining that the directive on the freedom of movement and residence of EU citizens and their family members¹ applies to EU citizens and their family members who move to or reside in a Member State other than that of which they are a national. Consequently, that directive applies to the situation of Mr Rendón Marín and his daughter of Polish nationality, but it does not apply to the situation of Mr Rendón Marín and his son of Spanish nationality or to that of CS and her son of British nationality as these children have always resided in the Member State of which they are nationals. Only Mr Rendón Marín and his Polish daughter therefore qualify for a right of residence under the directive.

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).

The Court states next that the FEU Treaty confers the status of EU citizen on every person who is a national of a Member State. By virtue of that status, every EU citizen has the right to move and reside freely within the territory of the Member States. Accordingly, the Court finds that Mr Rendón Marín's son and CS's child, who are EU citizens, qualify for such a right. The Court points out that **the FEU Treaty precludes national measures which are liable to deprive EU citizens of the genuine enjoyment of the rights conferred by virtue of their status as EU citizens**. Such deprivation occurs where refusing a national of a non-EU country a residence permit or expelling him would have the effect of obliging his child, an EU citizen in his sole care, to go with him and, therefore, to leave the territory of the European Union.

However, the Court explains that the status of EU citizen does not affect the possibility for the Member States of **justifying a derogation** from the right of residence of EU citizens or their family members (whether that right is exercised under the directive or under the Treaty) on grounds, in particular, of **public policy or public security**. Such a derogation must observe the Charter of Fundamental Rights and the **principle of proportionality** and must be based on **the personal conduct of the individual concerned** in order to ascertain whether he represents **a genuine, present and sufficiently serious threat affecting the society** of the host Member State. For the purpose of determining whether that derogation is consistent with the principle of proportionality, account should be taken of certain criteria, such as the duration of his residence, his age, his state of health, his family and economic situation, his social and cultural integration, the extent of his links with the country of origin and the degree of gravity of the offence.

So far as concerns the situation of Mr Rendón Marín, the Court explains that his criminal conviction in 2005 cannot in itself constitute grounds for refusing a residence permit, without assessment of his personal conduct or of any danger that he could represent for the requirements of public policy or public security.

In addition, the Court accepts that, in exceptional circumstances, **a Member State may adopt an expulsion measure by relying on the exception linked to upholding the requirements of public policy and safeguarding public security, concepts which must be interpreted strictly**. In order to justify such an expulsion measure, it is necessary to **assess whether**, having regard to the criminal offences committed by a national of a non-EU country having the sole care of a minor who is a Union citizen, that national's **personal conduct constitutes a genuine, present and sufficiently serious threat that may adversely affect one of the fundamental interests of society**. In this connection, account must be taken of the criteria set out above. The Court holds that, in CS's case, it is for the United Kingdom tribunal to **assess specifically the extent to which she is a danger by weighing up the interests involved** (that is to say, the principle of proportionality, the child's best interests and the fundamental rights whose observance the Court ensures).

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 judgments ([C-165/14](#), [C-304/14](#)) is published on the CURIA website on the day of delivery.

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