



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-165/16
Toufik Lounes v Secretary of State for the Home Department

According to Advocate General Bot, a non-EU national may benefit from a right of residence in the Member State in which his EU citizen family member resided before acquiring the nationality of that Member State and developing a family life there

In order to guarantee the effectiveness of the rights conferred by citizenship of the EU, the conditions for the grant of that derived right of residence ought not, in principle, to be stricter than those laid down by the free movement directive

Mr Toufik Lounes, an Algerian national, entered the UK in 2010 on a six-month visitor visa and then overstayed illegally. Ms Perla Nerea García Ormazábal, a Spanish national, moved to the UK as a student in 1996 and began working full time in the UK in 2004. She became a naturalised British citizen in 2009.

In April 2014, Mr Lounes and Ms García Ormazábal married. Following their marriage, Mr Lounes applied to the Secretary of State for the Home Department for the issue of a residence card as a family member of an EEA (European Economic Area) national. On 14 May 2014, he was served with a notice, together with a decision to remove him from the UK, on the grounds that he had overstayed in that State in breach of immigration controls.

In addition, by letter of 22 May 2014, the Secretary of State for the Home Department informed Mr Lounes that his application for a residence card had been refused. The letter stated that, in accordance with UK law, Ms García Ormazábal was no longer regarded as an 'EEA national' because she had acquired British nationality. Consequently, she was no longer entitled to rely on the rights conferred by the directive on free movement¹ and Mr Lounes could not therefore claim a residence card as a family member of an EEA national.

Mr Lounes brought a claim before the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), against the decision of 22 May 2014. The High Court has doubts regarding the compatibility of the UK legislation with EU law and asks the Court of Justice to give a ruling on that question.

In today's Opinion, Advocate General Yves Bot observes first of all that there is an inextricable link between the exercise of the rights conferred on Ms García Ormazábal by the directive and her acquisition of British nationality. **Although it is for each Member State to lay down the conditions for the acquisition and loss of nationality, that competence must be exercised having due regard to EU law** and the national rules in question must have due regard to EU law.

Next, **the Advocate General considers that the directive clearly limits its scope *ratione personae* to EU citizens residing in a Member State other than that of which they are nationals.**

The Advocate General concludes that, in spite of the clear link between the exercise of the rights conferred on Ms García Ormazábal by the directive and her acquisition of British nationality, her

¹ Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the EU 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. 78.)

legal situation has profoundly altered, both in EU law and in national law, on account of her naturalisation.

Thus, the Advocate General takes the view that **Ms García Ormazábal no longer falls within the definition of a ‘beneficiary’ within the meaning of the directive. It follows that her spouse is not eligible, on the basis of the directive, for a derived right of residence in the Member State of which his spouse is now a national.**

However, **the Advocate General recalls that, under Article 21(1) TFEU, Member States must permit EU citizens who are not their nationals to move and reside within their territory with their spouse and, possibly, certain members of their family who are not EU citizens.** The Advocate General refers, in this regard, to the Court’s case-law in accordance with which, in order to ensure the effectiveness of that article, the provisions of the free movement directive in the case of the return of an EU citizen to his Member State of origin are to be applied by analogy.

Inasmuch as, by choosing to be naturalised in the host Member State (the UK), Ms García Ormazábal has expressed her wish to live in that State in the same way as she would be prompted to live in her Member State of origin, creating strong, lasting ties with the host Member State, the Advocate General proposes that that case-law should be applied by analogy to the present case.

Consequently, **the effectiveness of the rights conferred by Article 21(1) TFEU demands that EU citizens, such as Ms García Ormazábal, should be able to continue the family life they have until then led with their spouse in the Member State whose nationality they have acquired.**

The Advocate General concludes that the conditions for granting a derived right of residence to a third-country national, a member of the family of an EU citizen, should not, in principle, be stricter than those laid down by the directive.

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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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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