



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-331/16 K. v Staatssecretaris van Veiligheid en Justitie and C-366/16 H. F. v Belgische Staat (Right of residence and alleged war crimes)

**The need for a restriction on the freedom of movement and residence of an EU citizen, or a family member of an EU citizen, suspected of having, in the past, participated in war crimes must be assessed on a case-by-case basis**

*That assessment requires the threat that the individual concerned represents to the fundamental interests of the host society to be weighed against the protection of the rights of EU citizens and their family members*

**Case C-331/16**

K. has both Croatian and Bosnian nationality and arrived in the Netherlands in 2001, accompanied by his wife and a minor son. Three successive applications for asylum were rejected, the final rejection, in 2013, being accompanied by a ban on entering the Netherlands. In the same year, following Croatia's accession to the EU, K. made an application for the withdrawal of the ban. In 2015 the Netherlands authorities granted that application but declared K. to be an undesirable immigrant to the Netherlands, on the ground that he was guilty of war crimes and crimes against humanity committed by special units of the Bosnian army. According to the authorities, the protection of public policy and public security required that all steps be taken to prevent citizens of the Netherlands coming into contact with individuals who, in their country of origin, had been guilty of war crimes. In particular, the authorities wished to prevent victims who had suffered from the actions of K., and members of their families, encountering him in the Netherlands. The rechtbank Den Haag, zittingsplaats Middelburg (District Court of the Hague, sitting at Middelburg, Netherlands), before which this case was brought, decided to ask the Court of Justice to interpret the EU directive on the right of movement and residence of EU citizens.<sup>1</sup>

**Case C-366/16**

H. F., an Afghan national, arrived in the Netherlands in 2000 and submitted an asylum application which was unsuccessful. In 2011, H. F. and his daughter settled in Belgium. After lodging, without success, a number of applications for residence in that country, in 2013 H. F. submitted a fresh application as a family member of an EU citizen, on the basis that his daughter was a Netherlands national. Ultimately, the Belgian authorities' refusal of the application was founded on the information contained in the file relating to H. F.'s application for asylum in the Netherlands. It would appear from that file that H. F. participated in war crimes or crimes against humanity, or gave orders, given his position, to commit such crimes. The Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings, Belgium), before which the case was brought, decided to make a reference to the Court of Justice for a preliminary ruling. It is unsure, in particular, whether the decision refusing him residence is compatible with the EU directive on the right of movement and residence of EU citizens.

In today's judgment, the Court points out, first of all, that Member States may adopt measures which restrict the freedom of movement and residence of EU citizens and their family members, irrespective of nationality, on grounds, in particular, of public policy or public security. A restriction imposed by a Member State on the freedom of movement and residence of an EU citizen (or a

<sup>1</sup> Directive 2004/38/EC 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 (OJ 2004 L 158, p. 77).

national of a non-EU country who is a family member of such a citizen) who has been the subject, in the past, of a decision excluding him from refugee status on the ground that there are serious reasons to believe that he committed a war crime or a crime against humanity or was guilty of acts contrary to the purposes and principles of the United Nations may fall within the scope of the concept of public policy or public security within the meaning of the directive.

According to the Court, the fact that the person concerned has been the subject, in the past, of a decision excluding him from refugee status cannot automatically permit the finding that the mere presence of that person in the territory of the host Member State constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. **A case-by-case assessment is necessary before a measure based on grounds of public policy or public security is adopted.**

The finding that there is such a threat must be based on an assessment of the personal conduct of the individual concerned, taking into consideration the findings of fact in the decision to exclude that individual from refugee status and the factors on which that decision is based, particularly the nature and gravity of the crimes or acts that he is alleged to have committed, the degree of his individual involvement in them, whether there are any grounds for excluding criminal liability, and whether or not he has been convicted. That overall assessment must also take account of the time that has elapsed since the date when the crimes or acts were allegedly committed and the individual's subsequent conduct, particularly in relation to whether that conduct reveals the persistence in him of a disposition hostile to the fundamental values of the EU, capable of disturbing the peace of mind and physical security of the population.

The Court also observes that, even if it appears unlikely that such crimes or acts may recur outside their specific historical and social context, **conduct of the individual concerned that shows the persistence of a disposition hostile to the fundamental values of the EU, such as human dignity and human rights, is, for its part, capable of constituting a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society**, within the meaning of the directive.

That assessment entails that the threat that the personal conduct of the individual concerned represents to the fundamental interests of the host society, on the one hand, must be weighed against the protection of the rights which EU citizens and their family members derive from the directive, on the other.

Finally, the Court holds that, in order to adopt an expulsion decision with due regard to the principle of proportionality, account must be taken of, inter alia, the nature and gravity of the alleged conduct of the individual concerned, the duration and, when appropriate, the legality of his residence in the host Member State, the period of time that has elapsed since that conduct, the individual's behaviour during that period, the extent to which he currently poses a danger to society, and the solidity of social, cultural and family links with the host Member State.

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**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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