



Where an EU citizen returns to his Member State of origin, that Member State must facilitate the entry and residence of the non-EU partner with whom that citizen has a durable relationship

A decision to refuse such a residence authorisation to the non-EU partner must be founded on an extensive examination of the applicant's personal circumstances and be justified by reasons

Ms Rozanne Banger, a South African national, is the partner of Mr Philip Rado, a British national. Ms Banger and Mr Rado lived together in South Africa between 2008 and 2010 before moving to the Netherlands. Ms Banger was granted a residence card by the Netherlands authorities in her capacity as an extended family member of an EU citizen, in accordance with the EU directive on the freedom of movement of EU citizens and their family members ('the directive').¹

The directive requires Member States to facilitate the entry and residence of the partner with whom a EU citizen has a durable relationship, where that EU citizen has moved to a Member State other than that of which he is a national. In relation to an application from such a partner, Member States are required to undertake an extensive examination of his personal circumstances and to justify any refusal of entry or residence.

In 2013, Ms Banger and Mr Rado moved to the United Kingdom and Ms Banger applied for a residence card. The Secretary of State for the Home Department refused that application on the basis of the UK legislation transposing the directive. That legislation provides for the rights of family members of British nationals returning to the UK after having exercised their right of freedom of movement in another Member State. In order to qualify as a family member of a British citizen, the applicant must either be the spouse or civil partner of the British national. As Ms Banger was not married to Mr Rado at the time her application was made, the UK authorities refused her application.

Ms Banger brought a challenge to the Secretary of State's decision. The Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom) decided to refer for a preliminary ruling to the Court of Justice questions concerning the interpretation of the directive and the implications of the judgment of the Court in *Singh*.² According to the case-law developed from that judgment, when EU citizens return to their Member State of origin after having exercised a right of residence in another Member State, their family members have the right to enter and reside in the first Member State and must enjoy at least the same rights as would be granted to them under EU law in another Member State. However, that case concerned the spouse of an EU citizen, whereas the present case concerns a partner who is neither married, nor has contracted a registered partnership ('the unregistered partner').

The Upper Tribunal therefore asks the Court of Justice whether the principles set out in *Singh* also apply in circumstances where the non-EU national is not married to the EU citizen returning to his Member State of origin. It also asks whether a refusal decision, which is not founded on an

¹ 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 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).

² Case: [C-370/90](#) *Singh*.

extensive examination of the applicant's personal circumstances and is not justified by adequate or sufficient reasons, is unlawful under EU law.

In today's judgment, the Court confirms, first of all, that the directive governs only the conditions determining whether an EU citizen can enter and reside in Member States other than that of which he is a national. It follows that the directive cannot confer a right on Ms Banger for her application for residence authorisation to be facilitated by the UK, her partner's Member State of origin.

However, the Court draws attention to its case-law according to which, in certain cases, non-EU nationals, family members of an EU citizen, may be accorded a derived right of residence in the Member State of which that citizen is a national, on the basis of Article 21 TFEU (provision which directly confers on EU citizens the fundamental and individual right to move and reside freely within the territory of the Member States). The underlying logic of that case-law is that an EU citizen would be discouraged from leaving the Member State of which he is a national in order to exercise his right of residence if he is uncertain whether he will be able to continue in his Member State of origin a family life which has been created or strengthened, with the non-EU national, in the host Member State, during a genuine residence. According to that case-law, the conditions under which such a derived right of residence may be granted must not, in principle, be stricter than those provided for by the directive.

Consequently, the Court holds that, in a situation such as the one at issue, the directive must be applied by analogy. It notes that the directive relates specifically to the partner with whom the EU citizen has a durable relationship and provides that the host Member State must facilitate entry and residence for that partner. Accordingly, **Article 21 TFEU requires the Member State of which an EU citizen is a national to facilitate the provision of a residence authorisation to the non-EU partner with whom that EU citizen has a durable relationship, where the EU citizen has exercised his right of freedom of movement and returns with his partner to the Member State of which he is a national in order to reside there.**

The Court notes **that the Member States are not required to accord a right of entry and residence to non-EU nationals having a durable relationship with an EU citizen, but are only under an obligation to confer a certain advantage on applications submitted by those nationals, compared with applications of other nationals of non-EU countries.**

Next, given that the directive applies by analogy to the case in which an EU citizen returns to his Member State of origin, the Court concludes **that a decision to refuse a residence authorisation to the non-EU national and unregistered partner of an EU citizen, where that EU citizen, having exercised his right of freedom of movement to work in another Member State, returns to the Member State of which he is a national, must be founded on an extensive examination of the applicant's personal circumstances and be justified by reasons.**

Lastly, the Court holds that non-EU nationals must have available to them a redress procedure in order to challenge the decision to refuse them a residence authorisation. In that context, the national court must be able to ascertain whether the refusal decision is based on a sufficiently solid factual basis and whether the procedural safeguards were complied with.

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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