



Where they have been granted on the basis of falsified documents, residence permits obtained for the purpose of family reunification and long-term resident status may be withdrawn, even if the holders of such permits or status were unaware of the fraud committed

However, as regards residence permits obtained for the purpose of family reunification, national authorities must carry out, beforehand, a case-by-case assessment of the situation of the persons concerned

In 2001, Y.Z. a Chinese national, was granted a fixed-term residence permit in the Netherlands in connection with his purported duties as the manager of a company. In 2002, his wife (the mother) and their minor son, also of Chinese nationality, obtained residence permits in that Member State in the context of a family reunification. In 2006, the mother and the son were issued with residence permits as long-term residents.

In 2014, the Netherlands State Secretary withdrew, with retroactive effect, first, the resident permit granted to Y.Z. on the ground that the employment allegedly undertaken by the latter was fictitious, since the company employing him did not carry out any business activity, and that the residence permits had therefore been obtained fraudulently. Second, the State Secretary also withdrew, with retroactive effect, the residence permits issued to the mother and the son for family reunification and the long-term residence permits issued to them on the ground that those permits had been acquired fraudulently since they had been issued on the basis of fraudulent declarations of Y.Z.'s employment. According to the State Secretary, it was irrelevant whether the mother and the son were or were not aware of the fraud committed by Y.Z. and the fraudulent nature of those declarations of employment.

Hearing the appeal brought by Y.Z., the mother and the son, the Raad van State (Council of State, Netherlands) asks whether, even though the mother and the son were unaware of Y.Z.'s fraudulent actions, the State Secretary could validly withdraw, first, the residence permits of the mother and the son, in accordance with the directive on family reunification¹ and, second, the long-term residence permits issued to them, in accordance with the directive on long-term residents.² Against that background, the Council of State referred questions to the Court of Justice.

In today's judgment, the Court of Justice recalls, first of all, that in accordance with the directive on family reunification, **Member States may, in principle, withdraw the residence permits of family members of a third-country national (the sponsor) where falsified documents have been produced or there was recourse to fraud for the purpose of obtaining those permits.**³ The Court clarifies, in that regard, that **the directive does not identify the person who provided or used those documents or who committed the fraud and does not require that the family members concerned knew of it.**

¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003, L 251, p. 12).

² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

³ Article 16(2)(a).

The Court considers that that interpretation is corroborated having regard to the central importance of the sponsor in the system established by the directive and its objective of facilitating the integration of the sponsors in the Member States by enabling them to lead a family life there, thanks to family reunification. It follows from that objective and a reading of the whole of the directive that, so long as the sponsor's family members have not acquired an autonomous right of residence, their right of residence is a right derived from that of the sponsor concerned and intended to assist the sponsor's integration. In those circumstances, a Member State must be able to find that the fraud committed by the sponsor affects the process of family reunification as a whole, in particular the derived right of residence of the members of the family of the sponsor and, on that basis, withdraw the family members' residence permits, even though they were unaware of the fraud that was committed. That is all the more so where, as in the present case, the fraud committed vitiates the regularity of the sponsor's right of residence.

The Court emphasises, however, that the withdrawal of residence permits granted to family members cannot occur automatically. Thus, the national authorities must carry out, beforehand, a case-by-case examination of the situation of the family members concerned taking into account all the interests in play. Moreover, the measures withdrawing those permits must be adopted in compliance with fundamental rights, including the right to respect for private and family life.

Thus, in the present case, the national authorities must take into account, amongst other things, the duration of the mother's and the son's residence in the Netherlands, the age at which the son arrived in that Member State and the possibility that he had been brought up and received an education there, and whether the mother and the son have family, economic, cultural and social ties with and in that Member State. They must also take into account whether the mother and the son have such ties with and in their country of origin, which is to be assessed on the basis of such factors as, amongst other things, a family circle present in that country, travel or periods of residence therein and the level of knowledge of the language of that country. The authorities must also take into account the fact that the mother and the son were not, personally, responsible for the fraud committed by Y.Z. and that they were unaware of it. It is for the Raad van State to verify whether the withdrawal of the residence permits granted to the mother and the son is justified in the light of those considerations.

As regards, next, **long-term resident status**, the Court recalls that **the directive on those residents provides that the status is lost where it is found to have been acquired fraudulently.**⁴ **The directive does not identify, however, the person who must have committed the fraud nor does it require that the resident concerned was aware of it.**

Furthermore, the Court emphasises that, having regard to the extensive rights attached to long-term resident status, it is important that Member States are able to combat fraud effectively by withdrawing that status from its beneficiary where that status was based on fraud. Thus, it cannot be contended, in order to retain rights acquired under the directive on those residents by means of fraud, that that fraud was not committed by the beneficiary of those rights or was not known to that beneficiary, since the decisive factor is that the acquisition of those rights was the result of fraud. The Court concludes that **a third-country national loses his long-term resident status where it is established that the acquisition of that status was based on falsified documents, even if that national was unaware of the fraudulent nature of those documents.**

That said, the Court clarifies that the loss of long-term resident status does not mean, in itself, that the person concerned also loses his right of residence in the host Member State on the basis of which he obtained that status. Where, as in the present case, the persons concerned obtained that status on the basis of a right of residence granted under the directive on family reunification, it is for the referring court to verify, beforehand, on the basis of a case-by-case examination of their situation, by making a balanced and reasonable assessment of all the interests in play, whether the third-country nationals must, in accordance with that directive, retain the right of residence that was issued to them under it.

⁴ Article 9(1)(a).

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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