



**A third-country national does not lose his or her long-term resident status if his or her presence in the territory of the European Union is limited, during a period of 12 consecutive months, to only a few days**

*Once that status is acquired, it is not necessary for the person concerned to have his or her habitual residence or centre of interests in the European Union*

The Landeshauptmann von Wien (Head of Government of the Province of Vienna, Austria) refused the application by a Kazakh national for the renewal of his long-term residence permit – as an EU resident – on the ground that, during the 5 years preceding that application, he had been present in the territory of the European Union for only a few days per year, with the result that he had to be regarded as being absent from the territory during that period, which entailed the loss of that status.

The Verwaltungsgericht (Administrative Court, Vienna), before which the person concerned challenged that decision, requested the Court of Justice to interpret the directive on the status of long-term resident third-country nationals.<sup>1</sup> That directive provides that the long-term resident loses that status in the event of ‘absence’ from the territory of the European Union for a period of 12 consecutive months.

More specifically, The Verwaltungsgericht Wien seeks to ascertain whether any physical presence of the person concerned in the territory of the European Union during a period of 12 consecutive months, even if such a presence does not exceed, during that period, a total duration of a few days only, is sufficient to prevent the loss of long-term resident status, or whether the Member States may set additional conditions such as the condition of having had, during at least part of the relevant period of 12 consecutive months, his or her habitual residence or centre of interests in that territory.

In today’s judgment, the Court of Justice adopts the first interpretation: **except in the event of abuse, it is sufficient, in order to prevent the loss of long-term resident status, for the person concerned to be present, during the period of 12 consecutive months following the start of his or her absence, in the territory of the European Union, even if such a presence does not exceed a few days in total.**

According to the Court, both the wording and context of the provision in question and the objective pursued by the directive support such an interpretation.

As regards, in particular, the directive’s objective, the Court states that that directive seeks to ensure the integration of third-country nationals who are settled lawfully and on a long-term basis in the Member States. Once long-term resident status has been acquired after a period of at least 5 years,<sup>2</sup> those nationals are entitled to the same rights as EU citizens as regards, inter alia,

<sup>1</sup> 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).

<sup>2</sup> According to the directive, Member States are to grant long-term resident status to third-country nationals who apply for it and who have resided lawfully and continuously for 5 years on their territory. To that end, the applicant must demonstrate, in particular, that he or she has stable, regular and sufficient resources to meet his or her own needs and those of the members of his or her family without recourse to the social assistance system of that Member State.

education and vocational training, social security, tax benefits and access to procedures for obtaining housing.

That objective supports an interpretation to the effect that **third-country nationals who, by virtue of the duration of their residence in the territory of the Member State concerned, have already demonstrated that they are settled in that Member State, are, in principle, free, as are EU citizens, to travel and reside, also for longer periods, outside the territory of the European Union, without that thereby entailing the loss of their long-term resident status, provided that they are not absent from that territory for a period of 12 consecutive months.**

Furthermore, the interpretation adopted is better able to guarantee the persons concerned an adequate level of **legal certainty**.

According to the Court, the provision in question refers, ultimately, to the loss of long-term resident status in situations in which the link which the holder of that right previously maintained with the territory of the European Union is loosened. That is the case, in accordance with that provision, only after an absence from that territory for a period of 12 consecutive months.

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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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