

**Case C-637/21****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

18 October 2021

**Referring court:**

Raad van State (Netherlands)

**Date of the decision to refer:**

13 October 2021

**Applicant:**

K.R.

**Defendant:**

Staatssecretaris van Justitie en Veiligheid

**Subject matter of the main proceedings**

The main proceedings concern a decision by the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security) determining that the foreign national K.R. ('the applicant') has lost her right of permanent residence in the Netherlands as a Union citizen.

**Subject matter and legal basis of the request**

The issue raised in the request for a preliminary ruling under Article 267 TFEU is whether a Union citizen who has acquired a right of permanent residence in a Member State can avoid forfeiting that right under Article 16(4) of Directive 2004/38 ('the Citizens' Rights Directive') after two years of absence merely by visiting that Member State, however briefly, during those two years. If not, what criteria must be met by a stay in the host Member State in order to interrupt that two-year period of absence?

### **Questions referred for a preliminary ruling**

1. Must Article 16(4) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union 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 be interpreted as meaning that any presence in the host Member State, however brief, of an EU citizen with a right of permanent residence, is sufficient to interrupt a period of absence exceeding two consecutive years?

2. If the answer to the first question is in the negative, what factors should be taken into account in determining whether a presence in the host Member State by such an EU citizen interrupts a period of absence from the host Member State exceeding two consecutive years? In that regard, is it relevant whether the EU citizen concerned relocated the centre of her interests to another Member State?

### **Provisions of European Union law relied on**

Recitals 17 and 18 and Article 16 of Directive 2004/38

### **Provisions of national law relied on**

Articles 8.7, 8.17 and 8.18 of the Besluit van 23 november 2000 tot uitvoering van de Vreemdelingenwet 2000 (Decree of 23 November 2000 on the implementation of the Law on Foreign Nationals 2000; 'Vreemdelingenbesluit 2000')

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 The applicant was born in 1991 and has British nationality. Between 1993 and 2009 she lived in the Netherlands with her parents, who are also British citizens. She then went to study in the United Kingdom and, after obtaining a PhD degree in 2018, she went to work there. In 2010 she obtained a residence document stating that she has a right of permanent residence in the Netherlands as a Union citizen. That document was renewed in 2016. Meanwhile, she had been deregistered from the Dutch population register in 2014. She visited the Netherlands annually to visit her parents and friends who were still living in the Netherlands. Those visits lasted from a few days to several weeks.
- 2 By decision of 30 December 2018, the State Secretary determined that the applicant no longer had a right of permanent residence in the Netherlands as a Union citizen as a result of her long-term departure to the United Kingdom. The State Secretary declared the applicant's objection to this unfounded, after which the applicant lodged an appeal with the rechtbank (District Court). After the

dismissal of that appeal, the applicant lodged an appeal with the referring court, the Afdeling Bestuursrechtspraak (Administrative Law Division) of the Raad van State (Council of State).

- 3 Since the facts of these proceedings concern a former Union citizen from the United Kingdom, the referring court will take 'Member State' and 'Union citizen', where applicable, to include the United Kingdom and its nationals and, at the end of the order for reference, will consider the significance for this case of the withdrawal of the United Kingdom from the European Union.

### **Essential arguments of the parties to the main proceedings**

- 4 According to the State Secretary, the applicant lost her right of permanent residence because she had been absent from the Netherlands for more than two years within the meaning of the Dutch legislation transposing Article 16(4) of the Citizens' Rights Directive. According to him, the term 'absence' refers to the relocation of one's centre of interests elsewhere. That is the case with the applicant because she went to study and work in the United Kingdom. The regular visits to the Netherlands do not alter this. With regard to this point of view, the District Court, referring to the judgments of 7 October 2010, *Lassal*, C-162/09, EU:C:2010:592, paragraphs 55 and 56, and of 21 July 2011, *Dias*, C-325/09, EU:C:2011:498, paragraphs 63 and 64, ruled that the concept of absence must be interpreted qualitatively and not only factually. The decisive question is whether a stay contributes to the integration objective which underlies Article 16 of the Citizens' Rights Directive. In the case of the applicant, this was no longer the case because of her absence in the United Kingdom.
- 5 The applicant takes the view that it follows from the wording of Article 16(4) of the Citizens' Rights Directive that the right of permanent residence can be lost only in the event of two years' continuous physical absence from the host Member State. That provision constitutes a restriction of the right of permanent residence and must therefore be interpreted strictly. In addition, according to her, the judgments in *Lassal* and *Dias* are not relevant. Those judgments relate to situations in which a foreign national wanted to acquire the right of permanent residence. Finally, the applicant emphasises that it is important to her not to lose her right of permanent residence. It is true that she can visit her parents and friends in the Netherlands for shorter periods without this right of residence, but she would like to retain the option of working in the Netherlands or elsewhere in the European Union in the future. In that regard, she notes that she grew up in the Netherlands and speaks fluent Dutch.

### **Succinct presentation of the reasoning in the request for a preliminary ruling**

- 6 The referring court notes, first of all, that the wording of Article 16(4) does not provide any explanation of the concept 'absence ... for a period exceeding two consecutive years' contained therein. The ordinary meaning of the word

‘consecutive’ points to the requirement of a continuous absence. Nowhere is it clarified whether a mere brief stay by the foreign national in the host Member State terminates this period of absence, and it is therefore also not clear what criteria, if any, must be met by that person’s presence in the host Member State.

- 7 It is settled case-law of the Court of Justice of the European Union (‘the Court of Justice’) that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context and the objectives pursued by the rules of which it is part and the origins of those rules (judgment of 11 April 2019 in Case C-483/17 *Tarola*, EU:C:2019:309, paragraph 37). In that regard, the referring court explains that, according to recitals 17 and 18 of the Citizens’ Rights Directive, the purpose of the right of permanent residence is to strengthen the feeling of Union citizenship and to promote social cohesion.
- 8 The provisions of the Citizens’ Rights Directive concern the free movement of persons, which forms one of the foundations of the Union. Therefore, according to the referring court, those provisions must be given a broad interpretation, whereas exceptions must be interpreted strictly (judgment of 22 June 2021, *FS*, C-719/19, EU:C:2021:506, paragraph 88). Such a strict reading of Article 16(4) of the Citizens’ Rights Directive could lead to the conclusion that only an uninterrupted physical absence from the territory of the host Member State for a period of two years or more can lead to the loss of a right of permanent residence.
- 9 However, according to the referring court, the case-law of the Court of Justice does not clarify whether the concept of absence refers merely to physical absence from the territory of the host Member State. According to the *Dias* judgment, ‘the integration objective which lies behind the acquisition of the right of permanent residence laid down in Article 16(1) of [the Citizens’ Rights] Directive is based not only on territorial and time factors but on qualitative elements, relating to the level of integration in the host Member State’ (paragraph 64). In that judgment, the Court of Justice also applied Article 16(4) of the Citizens’ Rights Directive to the question of whether periods of presence in the host Member State without the conditions governing entitlement to a right of residence of any kind having been satisfied, are such as to affect the acquisition of the right of permanent residence. The referring court concludes from that judgment that presence in a Member State does not necessarily mean that the integration objective is satisfied. According to the referring court, notwithstanding the differences from the present case, the importance attached to the integration objective in the *Dias* judgment is also relevant for the interpretation of the concept of ‘absence’ in Article 16(4) of the Citizens’ Rights Directive.
- 10 According to the referring court, it also follows from the judgment of 16 January 2014, *Onuekwere*, C-378/12, EU:C:2014:13, that physical presence in the host Member State does not necessarily mean that the integration objective, which underlies the concept of the right of permanent residence, is fulfilled. In that judgment, the issue was whether periods spent in prison counted for the purposes of determining whether the continuous residence required for a right of permanent

residence had been met. It did not therefore concern the loss of that right on the basis of Article 16(4), and the context of that case was obviously very different from the present one. Nevertheless, in the case of short-term family visits, the same question arises as to whether such a stay is sufficient to maintain adequately the integration link with the host Member State.

- 11 According to the referring court, it also follows from recitals 17 and 18 of the Citizens' Rights Directive that the right of permanent residence is intended for Union citizens who have chosen to settle permanently in another Member State and who reside there. Moreover, in the *Lassal* judgment, the Court of Justice, referring to the travaux préparatoires for the Citizens' Rights Directive, ruled that the loss of the right of permanent residence after more than two years of continuous absence from the host Member State 'could be justified because after an absence of that duration the link with the host Member State is loosened' (paragraph 55). This ruling indicates that Article 16(4) can be applied to the present dispute. Otherwise, a Union citizen could retain a right of permanent residence, once acquired, without residing in the host Member State by visiting it at least once every two years. That does not seem to be in line with the integration objective of the Citizens' Rights Directive.
- 12 The referring court also notes the similarities between the present case and Case C-432/20, *Landeshauptmann von Wien*, which is pending before the Court of Justice. Although that case concerns the loss of the status of long-term resident by a national of a third country, the question there, too, is whether any stay, however short, in the host Member State can prevent that loss and, if not, what conditions a stay in the territory of the Union must satisfy in order to have that effect. Since the applicant is not a third-country national but a Union citizen who has acquired a right of permanent residence on the basis of her residence in a Member State, the answer to the question referred for a preliminary ruling in Case C-432/20, although relevant, is not sufficient, in the opinion of the referring court, for the purposes of interpreting Article 16(4) of the Citizens' Rights Directive.
- 13 Lastly, the referring court emphasises that the answers to the questions in the present case remain relevant despite the United Kingdom's withdrawal from the European Union. Indeed, if the applicant still had a right of permanent residence at the end of the transitional period following the United Kingdom's withdrawal, she will have retained it, in accordance with the provisions of the agreement on the United Kingdom's withdrawal.