

Living in another Member State: barriers to EU citizens' full enjoyment of their rights Ireland 2017

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1. Table 1 – Case law

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| 1. Subject matter concerned | <input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 3, 31 and 35 of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 31 January 2011 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2011] IEHC 32 |
| Parties | <i>Justinia Izmailovic and Mahmoud Elmorsy Ads v. Commissioner of An Garda Siochana, Minister for Justice, Equality and Law Reform and the Attorney General</i> |

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| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/5A4CC9278C675FE08025782C0052CEA6 |
| Legal basis in national law of the rights under dispute | Article 40.4.2 of the Irish Constitution; Sections 2(2) and 58(1) of the Civil Registrations Act 2004; Articles 2(1) and 24 of the European Communities (Free Movement of Person) (No. 2) Regulations 2006 (S.I. No. 656 of 2006). |
| Key facts of the case (max. 500 chars) | The first named applicant, Justina Izmailovic, is a Lithuanian national, who came to Ireland in 2010 and registered as a self-employed painter/decorator with the Companies Registration Office. The second named applicant, Mahmoud Elmorsy Ads, is an Egyptian national, who unsuccessfully applied for asylum in Ireland in 2008, and was issued a deportation order on 5 November 2010. When he failed to present at the Garda National Immigration Bureau on foot of that deportation order, he was classified as an evader. The two applicants met online in early 2009 and lived together following Ms Izmailovic's arrival into the state in May 2010. On 12 January 2011, they were due to be married at the Civil Registration Office in Cavan. However, two members of the Garda National Immigration Bureau arrived before the marriage solemnisation ceremony and submitted a letter of objection to the Register, "on the grounds that it was a marriage of convenience." Mr Ads was arrested pursuant to Section 5(1) of the 1999 Immigration Act, detained at Cloverhill Prison, and the marriage did not take place. |
| Main reasoning / argumentation (max. 500 chars) | The High Court judge noted that the central reason for the arrest was to prevent the marriage from taking place because Mr Ads would have acquired EU residence rights conferred by Directive 2004/38/EC as a result. Justice Hogan queried whether the proposed marriage, even if it was a marriage of convenience, would have been legal under Irish law and concluded that "the marriage of Ms Izmailovic and Mr Ads would have been a valid marriage so far as Irish law is concerned". |
| Key issues (concepts, interpretations) clarified by | The court found that had the marriage taken place, Mr Ads would have been able to avail of residence rights (provided for in the directive), as a spouse of an EU national. However, this might have been limited by Article 35 of the directive, pertaining to powers to withdraw rights conferred by the directive, in the case of a marriage of convenience. Article 24 of the Free Movement of Persons Regulations 2006 specifies that if a |

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| <p>the case (max. 500 chars)</p> | <p>marriage of convenience is suspected, a review should be undertaken by a senior official within the Department of Justice. However, this review can only take place after the “fact of solemnisation”.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The court deemed that Mr Ads’s arrest was unlawful and ordered his immediate release, and recommended that if the law is found to be unsatisfactory in this area, the Oireachtas or the Union legislature should address these questions.</p> |
| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>“[...] the review of whether the marriage is a marriage of convenience must, of necessity, take place <i>after</i> the event and must also be hedged in with appropriate procedural safeguards. It follows that, no matter how well intentioned, An Garda Síochána are not empowered to prevent the solemnisation of a marriage on the grounds that they suspect - even with very good reason - that the marriage is one of convenience. Such a marriage would be, in any event, for the reasons stated above, a valid marriage for all purposes <i>other</i> than EU Treaty rights. The question of whether the non-EU (or, as the case may be, a non-EEA spouse) could be deprived of the <i>prima facie</i> benefits of the marriage for the purposes of the 2006 Regulations is one which is committed to a senior official of the Minister by Article 21 of the Regulations in the manner envisaged by Article 31 of the Directive” (para. 69, italics in judgment).</p> |

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| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |
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| 2. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 6, 7, 8, 14 and 24 of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 3 March 2017 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law) | [2017] IEHC 161 |

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| Identifier (ECLI) where applicable) | |
| Parties | <i>Loti Munteanu v. Minister for Social Protection, Ireland and the Attorney General</i> |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/C6A2160A8CD11324802580F3005EFD2E |
| Legal basis in national law of the rights under dispute | Sections 139, 141, 189, 219, 246 of the Social Welfare Consolidation Act 2005; the European Communities (Free Movement of Person) (No. 2) Regulations 2006 (S.I. No. 656 of 2006). |
| Key facts of the case (max. 500 chars) | The applicant is a Romanian national living in Ireland with her partner and two children since 2008. Ms Munteanu has had intermittent employment, selling the Big Issue magazine, begging and reliant on charitable organisations. In September 2014, she made an application for Jobseekers' Allowance, but this was refused on the basis that her right to reside expired when her period of self-employment (selling the Big Issue) ended. In August 2014, Ms Munteanu applied for Child Benefit, but this was rejected on the basis that she did not satisfy the habitual residence conditions set out in Section 246 of the Social Welfare Consolidation Act 2005. Ms Munteanu also applied for a Basic Supplementary Allowance Payment, which again was rejected on the habitual residence grounds. Her solicitor queried the test that the government applied and argued that to automatically exclude the applicant by consideration of the right to reside test was contrary to EU law. Justice O'Malley noted that since "the institution of these proceedings the applicant's partner has obtained employment and there is no longer an issue as to her right of residence. However, the parties are agreed that the case is not moot" (para. 70). |
| Main reasoning / argumentation | The High Court referenced several cases litigated before the CJEU, in consideration of the issue as to whether the applicant had a well-established link to the labour market in Ireland. Justice O'Malley opined that "[a] Member State is entitled to refuse to grant social benefits to economically inactive Union citizens who exercise |

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| (max. 500 chars) | their freedom of movement in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence. Otherwise, persons who arrive in a Member State without sufficient resources to provide for themselves could automatically claim a benefit intended to cover the beneficiary's subsistence costs (<i>Dano</i>)" (para. 113). |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | A key issue was whether the social welfare payments claimed could be considered assistance payments to enable the applicant to access the labour market in Ireland (which could be covered by the directive), or whether these were forms of social assistance legitimately governed by national legislation. Justice O'Malley ruled that EU law did not preclude the statutory residence requirements contained in the Social Welfare Consolidation Act 2005. |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The court concluded that Ms Munteanu was never a worker in the Irish state, and that she was an "economically inactive person who has not shown a real link to the Irish labour market" (para. 123). In these circumstances, the judge refused the reliefs sought (to apply a Directive 2004/38 test to her application for social welfare assistance payments, whereby some consideration of the applicant's personal circumstances would be taken into account). |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | "I accept the argument made on behalf of the applicant that <i>Brey</i> has not been overruled by subsequent cases such as <i>Alimanovic</i> or <i>Commission v. United Kingdom</i> , and that some level of consideration of the personal circumstances of a claimant is clearly necessary. However, the reference in <i>Brey</i> to aid granted before the assessment takes place does not, in my view, mean that the state must in every case grant one or more payments of every benefit applied for before it can reach a determination. In this case, the applicant's history of some degree of self-employment was considered, as was the fact that she had not had any other source of income apart from charitable donations by individuals and organisations. She had previously needed and been granted exceptional needs payments. The level of debt incurred by her in respect of accommodation was taken into account. The conclusion that her difficulties were not temporary cannot be considered irrational. I consider |

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| | that the degree of individual assessment was adequate for the purpose. It is also clear that <i>Brey</i> must be read in the light of subsequent judgments which establish that the question is not simply whether the one person in question would, by himself or herself, become an unreasonable burden (since the answer to that question would always be in the negative), but the effect of granting the benefit sought to all others in similar circumstances" (para. 128). |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |

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| 3. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Article 7, Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 16 July 2015 |
| Deciding body (in original language) | High Court |

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| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2015] IEHC 469 |
| Parties | <i>A.G.A and B.A. v. Minister for Justice, Equality and Defence</i> |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/154DB4462CB15EE580257E8C0048F0DC |
| Legal basis in national law of the rights under dispute | <p>A.G.A. sought a right of residence as “a derivative right under the Treaty on the Functioning of the European Union as the primary parental carer of the second named applicant who is dependent upon her mother. The second named applicant is a UK national, having been born in the UK and whose father is a UK citizen” (para. 37).</p> <p>Judicial review of refusal of UK national to reside in Ireland, pursuant to EU law. The High Court refers to Article 20 TFEU, Articles 7 and 14(2) of Council Directive 2004/38/EC of 29 April 2004, and Regulation 11 of the S.I. No. 656 of 2006 (Freedom of Movement Regulations).</p> |
| Key facts of the case (max. 500 chars) | <p>A.G.A, a Nigerian national and mother of a British citizen child (B.A.), sought leave to remain in Ireland pursuant to EU law. Citing Directive 2004/38/EC, A.G.A. argued that it is well established that “once an EU citizen can provide evidence that she has medical insurance and sufficient resources so that she will not become a burden upon the State, then her primary carer should be given a residence card” (para 10). A.G.A. first arrived in the Irish state in 2007, but subsequently travelled to the UK, where she entered into a relationship with a British citizen. They had a daughter together, B.A., the second named applicant, a UK</p> |

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| | <p>citizen, born in the UK in July 2011. After the relationship ended, A.G.A. returned to Ireland in 2012 with B.A., and began a relationship with A.A., an Irish national.</p> <p>A.G.A. submitted an application for residency in January 2014 on the basis of the <i>Zambrano</i> CJEU decision. The Minister rejected the application, stating that the "<i>Zambrano</i> ruling only applies to non-EEA parents of Irish born citizen children" (para. 4).</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The court cited the CJEU <i>Alokpa</i> judgment, noting that the CJEU concluded that Articles 20 and 21 of the TFEU did not preclude a state denying the right of a third country national to remain in its territory where his/her children are EU citizens, but do not possess the nationality of the host state where they seek to remain. The court further cited a qualification by the Advocate General Mengozzi, as well as CJEU case law to the effect that national authorities are entitled to check the existence, the amount, and the availability of resources to a dependent EU citizen in a host EU territory.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The court was not convinced that a refusal to reside in Ireland would automatically result in the child having to leave the EU region, because as a UK national, she would have a right to live in the UK, and her mother by proxy (as per the <i>Zambrano</i> ruling). A key issue was whether A.G.A. had sufficient resources to remain in the country with her dependent EU citizen child (citing <i>Commission v. Belgium</i>, CJEU decision of 2006). The court highlighted the fact that A.G.A. apparently had no resources of her own and was dependent on third parties, including A.G.A.'s partner, an Irish national.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The court agreed with the Minister for Justice's decision that "there has not been adequate evidence submitted as to the sufficiency of resources, i.e. as to the existence, amount and availability contemplated by the European Court of Justice. It seems to me that these are matters to which the decision-maker is entitled to have regard" (para. 46). The court found no substance to the applicant's argument that the reasons for the Minister's decision were not clearly articulated in a letter to A.G.A. dated 8 July 2014, and therefore refused the relief requested.</p> |

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| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>“In this situation the primary parental carer, the first named applicant, has no resources available of her own. Instead, she has support and promises of ongoing support from Mr A.A. and her purported ongoing free accommodation courtesy of Mrs [named]. While the decision in <i>Zhu and Chen, Alokpa</i> and <i>Commission v. Belgium</i>, suggests that the resources are available and that, the national state cannot designate that they come from a particular source; however, it is also clear, particularly from the decision in <i>Commission v. Belgium</i>, that the national state is entitled to satisfy itself as to the existence, amount and availability of the alleged resources” (para. 40).</p> |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | <p>Not directly, but it cited a case, <i>Alokpa & ors. v. Ministre du Travail, de l'Emploi et de l'Immigration</i>, which references Articles 7, 20, 21, 24, 33, 34 and 51(2) of the Charter of Fundamental Rights of the European Union.</p> |
| 4. Subject matter concerned | <ul style="list-style-type: none"> <input type="checkbox"/> 1) non-discrimination on grounds of nationality x 2) freedom of movement and residence <ul style="list-style-type: none"> - Article 7, Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | <p>30 July 2014</p> |

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| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2014] IEHC 384 |
| Parties | <i>OA and OPA v. Minister for Justice, Equality and Defence</i> |
| Web link to the decision (if available) | n.a. |
| Legal basis in national law of the rights under dispute | European Communities (Free Movement of Persons) No. 2 Regulations 2006, Regulations 2(3), 6(2)(a)(ii); 1996 Refugee Act (Section 2); European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518/2006); Directive 2004/38/EC, Article 7(1)(b). |
| Key facts of the case (max. 500 chars) | <p>OA, a Kenyan national, came to Ireland on 31 March 2008 with her daughter (OEA) and claimed asylum. She was refused asylum because she failed to establish a well-founded fear of persecution if returned to Kenya.</p> <p>This was upheld by the Refugee Appeals Tribunal, and OA applied for subsidiary protection. Shortly after arriving in Ireland, OA had entered into a relationship with a German national of Nigerian origin. This relationship had floundered before the birth of their child, OPA, the second named applicant, born on 16 June 2010. Not realising that her child was a German national by descent, OA had also applied for asylum on OPA's</p> |

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| | behalf, but in January 2012, she applied for a Stamp 4 residency pursuant to Directive 2004/38 EC, “based on her parentage of a German citizen child” (para 13). |
| Main reasoning / argumentation (max. 500 chars) | Counsel for OPA argued that she was exercising her freedom of movement by electing to reside in Ireland. Her mother, the first named applicant (OA), had a right to remain in Ireland as established by <i>Zhu and Chen v. Secretary of State for Home Department</i> [2004] if she satisfied the requirements of Article 7(1)(b) of Directive 2004/38/EC. The Minister interpreted the <i>Chen</i> ruling as signifying OA’s right to reside, but not to work in Ireland. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | The key issue was whether a non-EEA national could be granted not only a right to reside in Ireland on the basis of her daughter’s German citizenship, but also the right to work in Ireland. A restrictive interpretation of the meaning of sufficient resources would “constitute a disproportionate interference with the exercise of the fundamental right of freedom of movement, which is a central tenet of EU law enshrined in Article 21 TFEU”, inconsistent with the CJEU's preference for a broad interpretation of freedom of movement, as expressed in its <i>Chen</i> judgment (para. 82). |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The court decided that the Minister has to be mindful of the prospect of future resources, such as would stem from a job offer, when considering if the applicant meets the requirements of Article 7(1)(b) of Directive 2004/38/EC. The court declared that OA has the right to work pursuant to EU law and that “when assessing whether the applicant has ‘sufficient resources,’ the Minister is to take into account the definite prospect of future resources, such as those arising from a job offer which the applicant has accepted” (para. 85). |
| Key quotations in original language and translated into English with reference | “[...] the imposition of a condition as to the origin of the resources, such as that as posited by the respondent - namely that they be extant at the time of the application - is not necessary for the attainment of the objective pursued, i.e. the protection of the public finances of the Member States. Moreover, it seems to me that there would be very few cases where, based on wealth acquired and in the possession of the primary carer at the time that the application is first made, and independently of the primary carer's earnings, a minor EU citizen would be able to show ‘sufficient resources’” (para. 82). |

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| details (max. 500 chars) | |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |

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| 5. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 7(1)(b) and 13(2) of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 4 August 2016 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court (and the Court of Justice of the EU) |

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| Case number (also European Case Law Identifier (ECLI) where applicable) | [2016] IEHC 202; C-218/14 |
| Parties | <i>Kuldip Singh v. Minister for Justice and Equality; Denzel Njume v. Minister for Justice and Equality; Khaled Aly v. Minister for Justice and Equality</i> |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/AC261EDE8E8E7F1D80257FA200351B3D |
| Legal basis in national law of the rights under dispute | Regulation 10 of the European Communities (Free Movement of Persons) No. 2 Regulations 2006. |
| Key facts of the case (max. 500 chars) | All three cases involved the breakdown of a marriage between a non-EU spouse and an EU national who had departed from Ireland, the host Member State. Justice Mac Eochaidh observed that in the cases of Kuldip Singh and Denzel Njume “a divorce was obtained following the separation of the parties and the departure from the host Member State” of their EU national spouse, after which point, the Irish government refused their applications to retain residence rights” (para. 40). In the third case, that of Khaled Aly, the Irish state revoked Aly’s residence card following the departure of his EU spouse from Ireland, but ahead of divorce proceedings being completed. The applicants Njume and Singh argued that Article 13(2) of Directive 2004/38/EC establishes a personal right to residence for the non-EU spouse remaining in the host Member State following a divorce from the EU national (a marriage that lasts at least three years, including one year in the host Member State). Aly argued that the divorce need not necessarily be obtained in the host state, and that while divorce proceedings are pending, the non-EU spouse should be permitted to retain residence rights in the host state. |

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| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The High Court noted that the Irish case law was inconsistent on the parameters of Article 13(2) of the directive, and that the Court of Justice of the EU had not considered the issue to date. Therefore, two key questions were referred to the Court of Justice under Article 267 TFEU, which were:</p> <p>“(i) Where marriage involving EU and non-EU citizens ends in divorce obtained following departure of the EU citizen from a host Member State where EU rights were exercised by the EU citizen, and where Articles 7 and 13(2)(a) of Council Directive 2004/38/EC apply, does the non-EU citizen retain a right of residence in the host Member State thereafter? If the answer is ‘no’, does the non-EU citizen have a right of residence in the host Member State during the period before divorce following departure of the EU citizen from the host Member State?</p> <p>(ii) Are the requirements of Article 7(1)(b) of Directive 2004/38/EC met where an EU citizen spouse claims to have sufficient resources within the meaning of Article 8(4) of the Directive partly on the basis of the resources of the non-EU citizen spouse?</p> <p>(iii) If the answer to the second question is ‘no’, do persons such as the applicants have rights under EU law (apart from the Directive) to work in the host Member State in order to provide or contribute to ‘sufficient resources’ for the purposes of Article 7 of the Directive? (Section F)”.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The case was decided by a Grand Chamber of the Court of Justice with submissions from Greece, Denmark, Spain, Poland, the United Kingdom and the European Council (as well as an <i>amicus curiae</i> representation from the Immigrant Council of Ireland). In short, the CJEU found that if the EU spouse leaves the host country before initiation or the completion of divorce proceedings, that the non-EU husband/wife loses the right to residence under Article 7(2) of the directive and does not qualify for Article 13(2), and the latter article cannot be revived once the divorce proceedings are finalised. On the second question, which centred on the issue of sufficient resources (Article 7(1)(b)), the CJEU found that resources of the non-EU national could contribute to “sufficient resources” so that the EU member or his/her family members would not become a burden on the</p> |

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| | social welfare system of the host state. The Grand Chamber referred the matter of costs back to the national courts of Ireland. |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The High Court of Ireland thus refused the reliefs sought by the applicants. With respect to costs, the court ruled that the applicants were not entitled to any costs in relation to the domestic aspects of the proceedings, however, the court deemed the reference to the Court of Justice of the EU to be a separate and discrete matter. Furthermore, as the applicants enjoyed some level of success with respect to the question of “sufficient resources,” the High Court granted the “applicants all of the costs in relation to the order for reference” (para. 35). |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | “I believe that the decision of the Court of Justice in respect of the true meaning of art. 13(2) has far-reaching importance. I believe that the importance of the legal issue in the cases is underlined by the fact that a Grand Chamber of the ECJ. was empanelled and that so many countries decided to intervene [...]. I am satisfied that the decision of the ECJ. has clarified an unexplored area of law. The Court of Justice itself had not addressed it; Irish courts had addressed it giving conflicting decisions. So in all of those circumstances, my view is that notwithstanding the lack of success of the applicants on the main issue referred, it seems appropriate that I should award the applicants the costs of the reference only, to include the costs of preparing the order for reference” (paras. 33, 34). |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | Yes, Article 7. |

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| 6. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 16, 27-33, Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 12 October 2014 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2014] IEHC 624 |
| Parties | <i>Kovalenko and others v. Minister for Justice and Equality and others</i> |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/6FA41D0982A0011C80257DDC004D8099 |
| Legal basis in national law of | Regulation 20(1)(a)(iv) European Communities (Free Movement of Persons) Regulations 2006 and 2008. |

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| the rights under dispute | |
| Key facts of the case (max. 500 chars) | <p>The second named applicant was convicted of rape in Ireland in 2006 and sentenced to seven years in prison. He had lived in Ireland since 2003 and married the first named applicant, also originally from Latvia, in Ireland, in August 2005, and they had had a child together, born in Ireland on 19 February 2006, the third named applicant. The first named applicant was released from prison in 2011 and lived with his family in Ireland until his removal from the state on 13 June 2013.</p> <p>Following his release from prison, the second named applicant was informed about a proposal to issue a removal order against him alone, in line with powers vested in the Minister on the basis that it would be contrary to public policy for him to remain in the state and the Minister proposed to exclude him for a period of 10 years.</p> |
| Main reasoning / argumentation (max. 500 chars) | <p>The applicants requested “[I]eave to apply for judicial review of the review of removal and exclusion orders was granted [...] to seek an order of <i>certiorari</i> quashing the Minister's decision” on the grounds of violating the applicant’s rights under Directive 2004/38 EC, provisions of the European Communities (Free Movement of Persons) (No 2) Regulations 2006, and certain Charter rights (para. 40).</p> |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | <p>The court considered various aspects of the European Communities (Free Movement of Persons) Regulations 2006 and 2008, and Directive 2004/38 EC in Ireland, the grounds under both which could lead to removal and exclusion. Whilst the court found that the Minister had considered the relevant factors in determining that there was a serious risk to public policy, such as the proportionality of the exclusion against other factors, such as family relationships, the court was of the opinion that the procedures were lacking in two significant ways.</p> |
| Results (e.g. sanctions) and key consequences | <p>Materials were relied upon from the prison service, which the second named applicant had no opportunity to contest, contrary to the spirit of Directive 2004/38 EC and regulatory framework transposing the directive in Irish law. Furthermore, during the review process, an executive officer’s involvement at two levels of the process lacked independence, which was required by the European Communities (Free Movement of Persons)</p> |

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| or implications of the case (max. 500 chars) | Regulations 2006. In these circumstances, the court quashed the removal and exclusion order issued by the Minister, and approved a full judicial review. |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | “A challenge made to findings in respect of whether the Applicant would represent a serious risk to public policy concerning his social and cultural bonds or the weight given to his claim of good behaviour since release and his family relationships, are matters to be considered and were considered by the Minister on the review. All these factors were balanced in the additional consideration carried out and ultimately considered by the decision maker. The proportionality of the expulsion was also considered and apart from two matters to which I will return, the court is satisfied that the correct legal principles were applied in the review process” (para. 58). |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | Yes, Articles 7 and 47. |

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| 7. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 5(2), 5(1), 6(2), 7(2) of Directive 2004/38 <input type="checkbox"/> 3) voting rights |
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| | <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 28 October 2016 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2016] IEHC 691 |
| Parties | <i>Mohammed Ahsan v. Minister for Justice and Equality; Mohammed Haroon and Nik Bibi Haroon v. Minister for Justice and Equality; Noor Habib, Dilbaro Habib, Fatima Habib, Aisha Habib and Mareum Habib v. Minister for Justice, Equality and Law Reform</i> |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/B8FFD841CE0C45D18025808A00315B37 |
| Legal basis in national law of the rights under dispute | Regulations 4(3)(b), 6(1), 6(2)(a) of the European Communities (Free Movement of Persons) Regulations 2006 and 2008. |

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| <p>Key facts of the case (max. 500 chars)</p> | <p>Mr Ahsan is a British national who arrived in Ireland on 16 March 2015 and commenced employment immediately thereafter. His wife, a Pakistani national, applied for a Category C visa at the Visa Applications Centre in Lahore, so that she and their 3-year-old son, also a Pakistani national, could join Mr Ahsan in Ireland. Having submitted all the relevant documentation, and following various communications with the Visa Office in Dublin, in March 2016 Mr Ahsan initiated judicial review proceedings on the basis that the delay in processing these applications was in breach of Article 5(2) of the directive. Similarly, Mr Haroon is a British national, who was working in Ireland as a self-employed person, and in June 2015, his wife, an Afghani national, applied for an EU treaty rights visa to enter Ireland. No decision had been reached on this application by October 2015 due to long delays in processing applications, and with no indication as to when such a decision might be made, Mr Haroon also sought a review of the process. The third set of applications stemmed from Mr Habib, a British national, who exercised his EU treaty rights when he moved to Ireland in February 2015. As a self-employed person in the state, several dependant family members - his mother, his two sons and four grandchildren- applied to join him in June 2015. With no decision forthcoming by December 2015, the Habib applicants sought similar reliefs to Haroon.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The court decided in the first instance that all of the applicants were entitled to invoke Article 5(2) of the directive. With respect to whether the Irish state had breached that article, as transposed into Irish law by Regulation 4(3)(b) of the Free Movement of Persons Regulations 2006, the court agreed with the applicants, that the government adopted an artificial approach in dividing the visa application process into two parts, “with the clock running only when the period of actual examination of a particular application begins” (para. 138), which is not in accordance with the spirit of Article 5(2), which envisages an expedited process for EU treaty visas.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>Furthermore, given the limited volume of documents needed to activate entry visas for non-EU family members of EU nationals exercising their freedom to reside in another Member State, the delays in the three cases cannot be attributable to complex procedures (as might be required for residency permits). Even with respect to the latter residency permits, the Court of Justice of the EU ruled that these should be processed within six months, and although there is no precise timeframe set out in Article 5(2), in the Irish High Court, a judge argued “the framers of the Directive had in mind a considerably shorter time span than six months for</p> |

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| | <p>the issuing of visas to qualifying family members of EU citizens who have or intend to exercise their free movement rights, given the urgency which informs the language used in the provision" (para. 186).</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>Writing the judgment in July 2016, Justice Faherty pointed out that although the applications were received in June and August 2015 respectively, they cannot be said to be under consideration, and that there was no projected timeline for completion of the process. Therefore, he was "satisfied that the applicants are entitled to treat the delay as so unreasonable and egregious as to constitute a breach of the Directive and to justify the application for mandamus" (para. 189). The court issued an order directing the Irish government to take a decision on the respective applications within six weeks.</p> |
| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>"[i]n the absence of any projected timeframe at this remove, the question of resources, as averred to in Mr McDonagh's affidavits, is not sufficient to outweigh the provisions of the Directive, especially given the open-ended timeframe currently contemplated by the respondent for the processing of the visa applications, and also taking into consideration the emphasis which the ECJ places on the preservation of the family life of an EU citizen who exercises his or her right of movement across the territory of the Union" (para. 191).</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</p> | <p>The counsel for Ahsan raised Articles 41 and 47 of the Charter, but the court did not engage in these provisions in its conclusions.</p> |

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| 8. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Article 7, Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 3 June 2014 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2014] IEHC 168 |
| Parties | <i>Prince Edos v. Minister for Justice, Equality and Law Reform</i> |

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| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/9857DD756ADC162E80257E81004F070D |
| Legal basis in national law of the rights under dispute | Regulation 6, European Communities (Free Movement of Persons) (No. 2) Regulations 2006 and 2008. |
| Key facts of the case (max. 500 chars) | <p>The applicant, Prince Edos, is a Nigerian national, born in 1993 and the son of Vivian Wilhelm, who holds both Austrian and Nigerian citizenship. In February 2011, Vivian Wilhelm applied for a residence card for her son, under the European Communities Regulations and the EU Directive 2004/38.</p> <p>At that time, the applicant's mother was working for a company in Dublin and her solicitor furnished the Minister with all the requisite documents in support of the application. However, in August 2011, the Minister refused the application due to the fact that Vivian Wilhelm had left her position of employment and had set up her own business in Dublin.</p> |
| Main reasoning / argumentation (max. 500 chars) | Following this, further documentation was requested from the applicant's mother, in order to show that her business was a "viable trading concern," providing the EU citizen with sufficient income to maintain themselves without having to rely on social welfare (para. 6). When the relevant documentation was received, the Minister concluded that the "EU citizen's business do not show a level of transactions or funds which would be indicative of a viable business being in operation," and therefore that EU citizen was not meeting the requirements of Regulation 6(2)(a) regarding her self-employment. Vivian Wilhelm applied to the court for a judicial review to quash the Minister's decision of 30 January 2013 refusing her son's application for residence under the European Communities (Free Movement of Persons) Regulations 2006 and 2008 and Directive 2004/38/EC. |
| Key issues (concepts, interpretations) clarified by | The court noted that "[i]t is clear from the documentation before the Court that the applicant's application for residency in the State was refused because the applicant had not established that the business run by his mother was a viable business, which provided her with sufficient income to maintain herself and any dependants within the State" (para. 14). Counsel for the applicant argued that the Minister had applied the |

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| the case (max. 500 chars) | <p>wrong test and that “it is not the viability of the business which is the determining factor, but whether the business set up by the applicant’s mother is genuine and effective and not such as to be regarded as purely marginal and ancillary” (para. 14). The court examined relevant case law from the CJEU and concluded that the Minister had applied the wrong test in assessing the application for residency in the state.</p> |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | <p>The court quashed the Minister’s decision set out in a letter of 30 January 2013, and referred the matter back to the respondent for fresh consideration of Prince Edos’s residency application.</p> |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>“From a review of the relevant case law, and having regard to the terms of the Directive and the implementing Regulations, it would appear that the respondent applied the wrong test in assessing applicant’s application for residence within the State. In holding that the applicant had to provide evidence that his mother’s business was a “viable trading concern” which provided the applicant’s mother with “sufficient income” to maintain herself and her dependants in this State, the respondent was setting the bar too high. The test which ought to have been applied was whether Mrs Wilhelm was engaged in a self-employed activity that was effective and genuine [...]. If Mrs Wilhelm’s work was held to be effective and genuine, it did not matter that the remuneration for that work was less than the minimum industrial wage, or less than the minimum amount of social welfare payments under Irish national law, or that Mrs Wilhelm may have to rely on social assistance or other support to survive. If the Minister came to the conclusion that the work carried on by Mrs Wilhelm was effective and genuine, then Mrs Wilhelm would be exercising her right of establishment within the State and her son, the applicant, would have the right to reside here as well” (para. 22).</p> |
| Has the deciding body | <p>No.</p> |

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| referred to the Charter of Fundamental Rights? If yes, to which specific article. | |
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| 9. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 2 and 3, Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 23 July 2012 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier) | <i>[2012] IEHC 311</i> |

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| (ECLI) where applicable) | |
| Parties | <i>Belinda Wang, Lili Wang and Hui Zheng v. Minister for Justice and Law Reform</i> |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/4C2241B33C71DBFF80257A550037AD3B |
| Legal basis in national law of the rights under dispute | European Communities (Free Movement of Persons) (No. 2) Regulations 2006 and 2008; EU treaty based law and principles of EU law. |
| Key facts of the case (max. 500 chars) | <p>The second named applicant, Lili Wang, is a Chinese national who arrived on a student visa to Ireland in April 2004. She met Jozsef Tuza, a Hungarian national, and they married in December 2006. She was granted permission to remain in the country as the spouse of a Hungarian national under the 2006 Regulations. They had a daughter, the first named applicant, also a Hungarian national, born on 5 July 2009. The marriage broke down, and Mr Tuza returned to Hungary, maintaining no relationship with his daughter and making no contribution to her upbringing. The third named applicant also arrived to Ireland on a student visa and is now in a long term committed relationship with Lili Wang and they are expecting a baby.</p> <p>In light of the <i>Chen</i> judgment of the CJEU, the applicants appealed for a judicial review of the Minister's decision to revoke their permission to stay in the country.</p> |
| Main reasoning / argumentation (max. 500 chars) | The court decided that the third named applicant has no legal relationship to the Hungarian national child, Belinda Wang, as he is not married to her mother and therefore "he cannot be considered a parent of a minor citizen within the meaning of the provisions of the <i>Chen</i> judgment" (para. 20). |

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| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | <p>One key issue was whether Lili Wang had the sufficient resources to invoke a right to remain in Ireland, such as having the appropriate health insurance and adequate finances to avoid becoming a burden on the state. Documentation was furnished to suggest that the self-sufficiency means was actually been provided by the third named applicant. Thus, the Minister was not satisfied that Lili Wang was self-sufficient in her own right within the meaning of the <i>Chen</i> judgment.</p> |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | <p>The court granted leave to Lili and Belinda Wang to seek a judicial review of the Minister’s decision on the basis that a) the Minister erred in law and fact when deciding that Lili Wang was not a “permitted family member” within the meaning of Regulation 2(1) of the 2006 Regulations; and that b) the Minister made a disproportionate and unreasonable conclusion when deciding that Lili Wang was unable to satisfy the self-sufficiency criteria set out in the <i>Chen</i> judgment of the CJEU.</p> |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>“What is not clear, however, is what test of self-sufficiency has been applied by the respondent in reaching the conclusion that the means test condition is not met if the support of the third named applicant is eliminated. It is, accordingly, sufficiently arguable for the purpose of the grant of leave that the Minister has erred in fact in rejecting the application upon the basis that the conditions of the <i>Chen</i> principle are not met in this case” (para. 34).</p> |
| Has the deciding body referred to the Charter of | <p>No.</p> |

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| Fundamental Rights? If yes, to which specific article. | |
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| 10. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Article 6, Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 30 July 2010 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2010] IEHC 342 |
| Parties | <i>Peter Decsi and Huan Zhao v. Minister for Justice, Equality and Law Reform; Inga Levalda and Moinuddin Syed v. Minister for Justice, Equality and Law Reform</i> |

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| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/F1A51DD0F981F8F6802577E60041A4CC |
| Legal basis in national law of the rights under dispute | European Communities (Free Movement of Persons) (No. 2) Regulations 2006 and 2008; Immigration Act 2004 (Section 5); Directive 2004/38/EC, Article 23. |
| Key facts of the case (max. 500 chars) | <p>Huan Zhao, a national of China, came to Ireland on a student visa and exercised her right to part-time employment (20 hours per week). She met Peter Decsi, a Hungarian national, and they married in March 2010. When she submitted the Application for a Residence Card for non-EEA National Family Members she received an acknowledgment from the EU Treaty Rights Section of the Irish Naturalisation and Immigration Service, which seemed to suggest that she could not enter into employment while her application was pending. The legal issues pertaining to the case of Inga Levalda and Moinuddin Syed were the same as that of Peter Decsi and Huan Zhao.</p> <p>The main question for both couples concerns “the point in time at which the spouse of an E.U. citizen who is not a national of a Member State is entitled to take up employment” (para. 1).</p> |
| Main reasoning / argumentation (max. 500 chars) | The court cited the regulatory framework that transposed Directive 2004/38/EC into Irish law, and the jurisprudence of the European Court of Justice, in particular <i>Metock v Minister for Justice</i> [2008], to conclude that it is immaterial to the right to residence whether the marriage of an EU citizen to a non-EEA spouse takes place before or after the arrival of the spouse to the Union. The right to work is a related right, as provided by Regulation 18(1) of the 2006 Regulations and Article 23 of the directive, to qualifying family members, such as the spouse of a Union citizen. |
| Key issues (concepts, interpretations) clarified by | The key issue was whether the right to employment of a Union spouse accrues at the time of arrival in the state (if already married), from the date of marriage, or only from the issuance of a residence card. As the two Union spouses had been exercising their right to work legally, the court decided that it would be “incompatible with Union law for the respondent to attempt to impose upon a family member of a Union citizen lawfully |

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| the case (max. 500 chars) | present in the State, any removal or reduction of existing entitlements by reason only of having lodged an application in exercise of the right of residence enjoyed by the Union citizen's spouse" (para. 28). |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The court stated that unlike the right to residence, it could not be said that the right to employment derives from an EU treaty based law. However, the court was of the opinion that once the family member had the right to residence, he or she was also entitled to take up employment, and therefore, "the entitlement to take up employment operates in parallel or as an adjunct of the right of residence" (para. 30). This parallel right operates irrespective of nationality. The court granted declaratory relief to the applicants to take up employment from the issuance of the acknowledgment letter for their application for a residence card. |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | "Thus a non-national of the Member States is placed upon the same footing as nationals of a Member State so far as the entitlement to take up employment is concerned. Thus, the Chinese wife of a Hungarian citizen is to be treated in this regard in the same manner as, for example, the American wife of a British citizen or the Spanish wife of a German citizen residing in the State. It follows, accordingly, in the judgment of the Court, that the entitlement to take up employment on the part of a family member of a Union citizen is not dependent upon or postponed to the issue of the residence card" (para. 30). |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |

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| 11. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 6, 7, 16(1), and 28(3) of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 31 July 2015 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2015] IEHC 683 |
| Parties | <i>Ionel Sandu v. Minister for Justice and Equality</i> |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/4384BC970736FD6E80257EFA004BDEC9 |
| Legal basis in national law of | European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006), regulation 21(1). |

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| the rights under dispute | |
| Key facts of the case (max. 500 chars) | <p>The applicant in this case is a Romanian national who sought asylum in Ireland on 26 March 2001. He and his partner, also a Romanian national, had a child in the state, an Irish citizen, on 21 April 2001.</p> <p>By virtue of his daughter’s Irish citizenship, Mr Sandu withdrew his application for refugee status and applied for residency on the basis of an Irish born child. His application for permission to remain in the state was confirmed by a letter dated 24 April 2002, based on his “parentage of an Irish citizen child” (para. 4). Over the years, Mr Sandu accumulated a number of criminal offences, culminating in a conviction for assault causing harm, which attracted a 3.5-year prison sentence, which commenced in November 2011. Prior to his release from prison in June 2014, a removal order was issued. The applicant contended that the Minister had not correctly calculated his period of residence in Ireland prior to imprisonment, and that having being resident in Ireland for ten years, he should be able to avail of protections under Article 28(3) of the directive, whereby expulsion is only permitted on imperative grounds of security.</p> |
| Main reasoning / argumentation (max. 500 chars) | <p>The court reviewed relevant jurisprudence of the CJEU to conclude that any period of imprisonment will not be included in the calculation of residency, that all factors pertaining to each individual case must be taken into account, and that the ten-year period should be calculated from the date of issuance of the deportation or expulsion order.</p> |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | <p>In the instant case, the respondent should have asked the question as to whether the applicant had resided in Ireland for 10 years prior to the commencement of his prison sentence (16 November 2011). The respondent had “erred in the manner in which it addressed the question as to whether the applicant had resided in the State for ten years within the meaning of Article 28(3)(a) of the Citizenship Directive” (para. 41). As the applicant had legally been entitled to be in the state from March 2001, the 10-year residency requirement prior to his incarceration in November 2011 was met. Furthermore, the court found that the state did not give</p> |

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| | proper weight to the unusual circumstances of the applicant's asylum application and the ultimate grant of leave to remain. |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The court ruled that the state erred in calculating the applicant's period of residence in the State, and made an order quashing the expulsion order. |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | "For the sake of completeness, I should add that it is not enough for an applicant to establish physical continuous presence in the State for ten years. It is appropriate for the decision maker to ask: "what was the applicant doing?" The purpose of the enhanced protection from expulsion, according to the decisions of the ECJ is to protect the integration achieved by a migrant in a host state. The longer the presence, the deeper the integration, the greater the protection from expulsion. This is designed, according to the recitals in the directive to promote free movement of Union citizens within the territory of the Union. In this sense, it is appropriate to examine the ten year period of residence as one which is related to the exercise of treaty rights. Thus, it is appropriate for the decision maker to inquire whether the migrant claiming ten years residence was, during the first five year period, exercising E.U. treaty rights and, in particular, whether the applicant was engaged in the activities or covered by the circumstances described in art. 7(1) of the directive. No such question may be asked in relation to the second five year period because a right of permanent residence is achieved after five years and, thereafter, one is not required to be art. 7(1) compliant in order to remain in the host state" (para. 48). |
| Has the deciding body | No. |

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| referred to the Charter of Fundamental Rights? If yes, to which specific article. | |
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| 12. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Article 10, Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 12 March 2010 |
| Deciding body (in original language) | High Court |
| Deciding body (in English) | High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2010] IEHC 85 |

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| Parties | <i>John Mbeng Tagni v. Minister for Justice, Equality and Law Reform</i> |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/67E4CEF1F140317F80257735004AD398 |
| Legal basis in national law of the rights under dispute | Directive 2004/38/EC; European Communities (Freedom of Movement of Persons) Regulations 2006; 1999 Immigration Act. |
| Key facts of the case (max. 500 chars) | <p>The applicant, Mr Tagni, is a Cameroon national and a failed asylum seeker who was married to a Polish national. In February 2006, the couple applied for residency for Mr Tagni, which was granted initially for one year, and subsequently for another year. In light of the <i>Metock</i> ruling by the European Court of Justice, the Minister for Justice invited Mr Tagni to apply for a five-year residency card, subject to the provision of various supplementary documents.</p> <p>During the review proceedings, it emerged that Mr Tagni's relationship with his wife had broken down and that they were currently living apart. The Minister decided, on 10 November 2008, to refuse Mr Tagni's application for a residence card on the basis of his relationship to an EU national.</p> |
| Main reasoning / argumentation (max. 500 chars) | As the Minister was proposing to serve a deportation order on Mr Tagni in accordance with the 1999 Immigration Act, his solicitor requested that the Minister review this decision, and provided the respondent with additional documentation (para. 2.16), emphasising the urgent need to expedite this process. When this did not occur within a reasonable period, the respondent's solicitor sought a judicial review on 10 separate grounds (para. 3.1). |
| Key issues (concepts, interpretations) clarified by | The court considered that the invitation to apply for a residency card post- <i>Metock</i> could be considered a fresh application. This was submitted on 9 October 2008, and it was reasonable for the applicant to receive a decision by 9 April 2009. Because the definitive review decision had not been completed before the start of the |

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| the case (max. 500 chars) | High Court hearing (15 October 2009), almost 11 months after the commencement of the review, the court concluded that the Minister failed to review the decision within a reasonable time frame. |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The court granted a declaration to Mr Tagni to the effect that the Minister was guilty of failing to render a decision in a timely manner from the commencement of the review procedures, but dismissed all other aspects of the applicant's claim. |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | "As of the date of the hearing no decision had been rendered. The Court has criticised this and has expressed the view that the respondent has been guilty of a failure to render his decision on the review within a reasonable time" (para. 7.12). |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | The Charter of Fundamental Rights, Article 41, is referenced in the applicant's pleadings, but not in the substance of the court's ruling. |

2. Table 2 – Overview

| | non-discrimination on grounds of nationality | the right to move and reside freely in another Member State | the right to vote and to stand as candidates | the right to enjoy diplomatic protection of any Member State | the right to petition |
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| Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the | | 22 | | | |

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| reference period) | | | | | |
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