

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

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1. Table 1 – Case law

<p>1. Subject matter concerned</p>	<p><input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>24 May 2010</p>
<p>Deciding body (in original language)</p>	<p>Qorti Ċivili Prim' Awla (Ġurisdizzjoni Kostituzzjonali)</p>
<p>Deciding body (in English)</p>	<p>First Hall Civil Court (Constitutional Jurisdiction)</p>
<p>Case number (also European Case Law Identifier (ECLI) where applicable)</p>	<p>54/2008</p>
<p>Parties</p>	<p><i>Ogunyemi Kehinde Olusegum & Sandra Wetterich v. Director of Public Registry and the Attorney General</i> (Ogunyemi Kehinde Olusegum u Sandra Wetterich <i>kontra</i> Direttur Registru Pubbliku u l-Avukat Generali)</p>

Web link to the decision (if available)	Cases can be found through the search function on the Justice Services website .
Legal basis in national law of the rights under dispute	Article 32(c) of the Constitution of Malta ¹ - respect for private and family life.
Key facts of the case (max. 500 chars)	<p>Olusegum and Wetterich wished to get married. Mr Olusegum was a third-country national whose visa had expired and subsequent requests for extension were denied in 2007. Ms Wetterich was a German national studying in Malta. They met in 2004 and decided to marry in 2007. They applied with the Public Registry for the marriage banns to be published. Marriage banns are posted in a public place within the Marriage Registry office building and in a place where official acts are usually posted in the town in which each of the persons to be married resides, usually the notice boards of the Local Council office and/or of the local parish church. Once the banns are published, the Marriage Registrar will issue a certificate that the banns have been so published. No marriage may be celebrated without the issuance of the certificate of the publication of the banns. The request for the publication of the banns was denied by the Marriage Registrar as Mr Olusegum did not have a valid visa, consequently the marriage could not take place.</p> <p>The case was filed on the basis of Article 43 of the Treaty establishing the European Community (now Article 49 TFEU) and Article 7(2) and Article 24 of Directive 2004/38/EC, together with Article 32 of the Constitution of Malta on the right to private and family life and Article 8 and 12 of the European Convention on Human Rights.</p>

¹ Malta, [Constitution of Malta](#).

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The applicants argued that the rights of establishment under the TFEU and the right of family members of EU Nationals to reside freely in another State, together with the right to family life protection under the Constitution and the ECHR, were breached by the Public Registry's refusal to issue the marriage banns.</p> <p>The respondents counter-argued that Article 43 of the Treaty establishing the European Community (now Article 49 TFEU) only gave the right to EU nationals to reside in another Member State and this right was not breached, as Wetterich continued to live in Malta. In addition, Olusegum did not yet qualify as "family member" under Directive 2004/38/EC.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court examined the right to family life under the constitution, ECHR and the jurisprudence of local courts and ECtHR. The court agreed with the respondents' argument that the decision of the Public Registry did not breach Wetterich's rights under Article 43 (now 49) of the treaty.</p> <p>The court said that although it is true that the directive gives the right to EU citizens to reside freely within the territory of another Member State and this right should also be granted to their family members, irrespective of nationality, the applicant does not qualify as a "family member". The court added that the directive also states that for those persons who do not fall into the definition of family member then it is up to the Member State, on the basis of its national legislation, to decide whether entry and residence could be granted. The court concluded that the Maltese authorities had already made that analysis and that there was no discrimination or prejudice in the criteria applied by the authorities in taking that decision. The court rejected the pleas, and the judgement was decided against the applicants.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case</p>	<p>The pleas were rejected by the court and the judgement was decided against the applicants. The case clarified that third-country nationals without a valid visa or residence permit cannot marry in Malta even when the intended spouse is an EU national residing regularly in Malta.</p>

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Għalkemm il-premessi d-Direttiva tittratta l-kwistjoni ta’ persuni who are not included in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, jingħad ukoll li huwa the host Member State on the basis of its own national legislation li jrid jiddeciedi whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.</i></p> <p><i>Kif diġa’ rajna, dawn il-konsiderazzjonijiet saru mill-awtoritajiet Maltin u fil-kriterji adottati minnhom ma hemm l-ebda preġudizzju fil-konfront tar-rikorrent Olusegum.”</i></p> <p>Translation: “Although the preambles in the directive address the situation of persons who are not included in the definition of family members under this directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, it is also stated that it is the host Member State on the basis of its own national legislation that decides whether an entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.</p> <p>As we have already seen, these examinations were carried out by the Maltese authorities and there has been no discrimination in the criteria adopted in relation to Olusegum.”</p>
Has the deciding body referred to the Charter of	No.

Fundamental Rights? If yes, to which specific article.	
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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 - Article 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	24 June 2016
Deciding body (in original language)	Qorti tal-Appell (Kompetenza Inferjuri)
Deciding body (in English)	Civil Court of Appeal (Inferior Jurisdiction)
Case number (also European Case Law Identifier)	43/2015

(ECLI) where applicable)	
Parties	<i>Jutte Windekind v. Director General Social Security</i> (Jutte Windekind (Appellanti) Vs Direttur Generali tas-Sigurta Socjali (Appellat))
Web link to the decision (if available)	Cases can be found through the search function on the Justice Services website .
Legal basis in national law of the rights under dispute	Regulation 3 of the Free Movement of European Union Nationals and their Family Members Order, S.L. 460.17. ²
Key facts of the case (max. 500 chars)	Winderkind was a pregnant German national who came to reside in Malta together with her eldest daughter. She was not employed in Malta. Windekind applied for social assistance for unemployed persons for the period covering the time she was pregnant and also following the birth. After the first three months of residence in Malta, the applicant did not apply for a certificate of residence as is required by the Free Movement of European Union Nationals and their Family Members Order. The applicant was not employed for the period she resided in Malta, and she did not present any proof of financial resources with the application for social benefits and neither to the Court. This request was denied by the Director for Social Security, upheld also by the umpire (second instance proceedings), based on the fact that EU citizens have the right to reside if they have (i) sufficient resources for themselves and their family members, and (ii) health insurance covering them and their family, which Windekind did not have.

² [Free Movement of European Union Nationals and their Family Members Order, S.L. 460.17.](#)

	<p>Windekind pleaded that the director and the umpire disregarded Regulation 3 of the order which lays down the right to reside in Malta and the principle of equal treatment. The respondents counter-argued that Regulation 11 of the same order requires that EU citizens must show that they have sufficient resources and medical insurance to reside in Malta.</p> <p>The procedure for attacking a refusal of social security benefits of the Director of Social Security involves filing an appeal with the Umpire for Social Security at first instance, and, from there, one can appeal the umpire's decision in the Civil Court of Appeal (Inferior Jurisdiction).</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The appellant claimed that the Free Movement Order, which implemented Directive 2004/38, guaranteed the equal treatment of EU citizens to Maltese citizens and prohibited discriminatory treatment of EU nationals. The appellant also held that in denying her unemployment benefits, the authorities failed to take into consideration the CJEU's decision in <i>Brey</i> (C-140/12). Lastly, she held that the application for unemployment benefits was filed when the appellant was at an advanced stage of pregnancy and could not work. The Director of Social Security argued that every Union citizen had the right to reside in Malta if they had sufficient resources for themselves and their family without having recourse to the social security system in Malta. In addition, the Union citizen should have medical insurance for themselves and their family.</p> <p>The judgment contains the Social Security Umpire's reasoning for its refusal to overturn the director's decision. The umpire pointed out that it is essential that EU citizens have financial means to sustain themselves when they move to Malta, as persons who move to Malta and do not work cannot expect to receive the benefits which they did not receive in their Member State. The umpire also took into consideration that Windekind could work after birth but refused to do so, and that consequently recourse to local social assistance was not permissible.</p> <p>The court contended that EU citizens have the right to reside in Malta for more than three months, however, in order to do this, they must apply for a certificate of registration. The issuance of this certificate depends on the</p>

	<p>applicants showing that they have sufficient resources to sustain themselves without recourse to the social security system in Malta. The appellant did not present any proof of any certificate of registration. The court held that the application of <i>Brey</i> in this particular case was not possible as the appellant was not in possession of a residence certificate issued on the basis of Regulation 11 of the order as was the case in <i>Brey</i>. The applicants in <i>Brey</i> were in possession of a residence certificate, whereas Winderkind did not provide any proof that she was residing in Malta legally.</p> <p>The court held that the umpire was correct in stating that the appellant could find work, and the appellant did not give any proof that she came on holiday to Malta and had to remain here due to her pregnancy, suggesting that she knew of her pregnancy before leaving Germany. The Court referred extensively to the CJEU's judgment in <i>Dano</i> (C-333/13) and held that the mere presence of the EU citizen in Malta was not sufficient for them to be granted social benefits. Furthermore, the appellant did not provide any proof that she had financial resources for herself and her children and she would there not qualify for a residence certificate. In fact, from her application for social assistance, she herself did not have any financial resources and as a consequence she could not invoke the principles of non-discrimination as contemplated by legislation.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court clarified that the mere presence of EU nationals in the country is not enough to be entitled to social security benefits. There was no indication that she intended to work. The applicant also did not prove that she had enough resources to be able to qualify for any residence certificate. On the contrary, the appellant had declared – when applying for benefits – that she did not have financial resources for her and her two children. Therefore, she could not invoke the principle of non-discrimination outlined in Regulation 3 of the Free Movement Order.</p>
<p>Results (e.g. sanctions) and key consequences</p>	<p>Winderkind's appeal was denied and the refusal of the director to grant her social benefits was confirmed by the court.</p>

or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"A bazi tal-insenjament fil-każ ta' Dano, il-presenza ta' ċittadin tal-Unjoni Ewropea f'Malta m'hijiex biżżejjed sabiex jingħata l-benefiċċju soċjali. L-appellanti ma ressqet l-ebda prova li turi li kellha r-riżorsi finanzjarji sabiex f'Malta tipprovdi għaliha nnifisha u għal uliedha, u għalhekk ma jirriżultax li tikkwalifika għall-għoti ta' ċertifikazzjoni ta' residenza. Pjuttost minn dak li ddikjarat fl-applikazzjoni, fi żmien li applikat għall-għajnuna soċjali, ma kellhiex riżorsi finanzjarji għaliha u wliedha. Il-konsegwenza hi li ma tistax tinvoka l-prinċipju tan-non diskriminazzjoni kontemplat fir-regolament 3(1) tal-Liġi Sussidjarja 460.17 sabiex tirċievi l-għajnuna soċjali."</i></p> <p>Translation: "On the basis of the reasoning in <i>Dano</i>, the presence of an EU citizen in Malta is not enough to be granted social benefits. The appellant did not present any proof showing that she had the financial resources in order for her to be able to provide for herself and her children in Malta, and therefore it does not result that she would qualify for the residence certificate. On the contrary, from what she declared in her application, at the time when she applied for social assistance, she did not have the financial resources for herself or her children. Consequently, she cannot invoke the principle of non-discrimination as laid down in Regulation 3(1) of Subsidiary Legislation 460.17 in order for her to receive social assistance." ³</p>
Has the deciding body referred to the	No.

³ The same reasoning was adopted in *Petya Angelova v. Director General Social Security Court of Appeal (Inferior Jurisdiction)*, Appeal No. 42/2015, decided on Friday, 24 June, 2016.

Charter of Fundamental Rights? If yes, to which specific article.	
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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 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	28 March 2017
Deciding body (in original language)	Civil Court of Appeal (Inferior Jurisdiction) ⁴
Deciding body (in English)	Civil Court of Appeal (Inferior Jurisdiction)

⁴ This decision was taken in English language, as there is a possibility to ask the courts for proceedings to be conducted in English if one of the parties does not speak Maltese.

Case number (also European Case Law Identifier (ECLI) where applicable)	12/2016
Parties	<i>Maksimova Desislava Vasileva (ID 60804A) v. Director General Social Security</i>
Web link to the decision (if available)	Cases can be found through the search function on the Justice Services website .
Legal basis in national law of the rights under dispute	Regulation 3 of the Free Movement of European Union Nationals and their Family Members Order, S.L. 460.17. ⁵
Key facts of the case (max. 500 chars)	<p>The respondent was a Bulgarian citizen and a divorced mother of three children. Throughout her time in Malta, she worked with seven different companies offering health services. In 2015, she applied for social benefits. The assistance she applied for was a non-contributory cash benefit, which is financed through tax revenue, and a benefit within the meaning of Article 70(2) of Regulation 883/2004. The arguments of the appellant and of the respondent were solely based on the Free Movement of European Union Nationals and their Family Members Order.</p> <p>1. The application for benefits was denied on the basis that she did not have sufficient resources in accordance with the Free Movement of European Union Nationals and their Family Members Order. The</p>

⁵ [Free Movement of European Union Nationals and their Family Members Order, S.L. 460.17.](#)

	<p>umpire upheld Vasileva's appeal. However the director filed a further appeal to overturn the umpire's decision in the Court of Appeal.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Director of Social Security based the appeal on the premise that the aim of Directive 2004/38 is to prevent economically inactive EU citizens from using the host Member State's welfare system to fund their means of subsistence. This enables a Member State to have the possibility of refusing to grant social benefits to economically inactive EU citizens who do not have sufficient resources to claim a right of residence. The court, in its decision, took into consideration that the director had not considered the merits of the case, and that the applicant was in fact a permanent resident in Malta.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court clarified that in taking a decision, the director must consider the merits of each individual case and not base a decision merely on the fact that in terms of the Free Movement Order, an EU citizen must have sufficient resources for herself and her children in order to continue living in Malta. In fact, the court clarified that it is only during the first three months of residence that Union citizens are not entitled to Maltese social assistance, and that the Director has a duty to process applications and decide on the merits of each case.</p> <p>The court also examined whether Vasileva had acquired permanent residence, as if this was the case, then the requirement to have sufficient resources and medical insurance did not apply. The court contended that the director should have made this examination when first processing the application. The court took into consideration that Vasileva was granted a residence permit in 2010 and was then further issued a residence permit in 2015 which was valid until 2020. In addition, her application for benefits was presented after five years from the first residence permit, and there was no proof that any expulsion orders were issued against her. Therefore, it was evident that Vasileva acquired the right to permanent residence.</p>
<p>Results (e.g. sanctions) and key consequences</p>	<p>The court rejected the director's appeal and ruled in favour of Vasileva.</p>

or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"The court immediately notes that from the appellant's decision (dated 9th September 2015) it is evident that he did not consider the merits of respondent's case but merely based his decision on the fact that he contends that in terms of Legal Notice 191 of 2007 respondent, as a foreigner, must have sufficient resources for herself and her children in order to continue living in Malta."</i></p> <p>Translation: <i>"In terms of Article 3(1) of the Free Movement of European Union Nationals and their Family Members Order S.L. 460.17 (Ordni dwar il-Moviment Liberu ta' Ċittadini tal-Unjoni Ewropea u tal-Membri tal-Familji tagħhom) it is only during the first three months of residence that Union citizens are not entitled to Maltese social assistance. This in itself is proof that Union citizens are entitled to apply for social benefits and the appellant has a duty to process the application and decide on the merits of the case."</i></p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

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
Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the reference period)	1	2	0	0	0