



Jean Monnet Center of Excellence
Research on Crucial Issues of European
Integration

University of Macedonia
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Notebook: Equality and social exclusion in the EU

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Legal protection of freedom of religion in the European Union and in Greece

European level

A. European Union

1. Legal framework

| Treaty on the Functioning of the European Union | |
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| Article 10 | <i>"In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."</i> |
| Article 17 | <i>1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. 2. The Union equally respects the status under national law of philosophical and non-confessional organizations. 3. Recognizing the identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations.</i> |

Some information about the TFEU

- ❖ It was previously named *Treaty establishing the European Community*.
- ❖ Its content was added in the Treaty on the Functioning of the EU with the Lisbon Treaty in 2007.
- ❖ The articles are under **TITLE II- PROVISIONS HAVING GENERAL APPLICATION**.
- ❖ The previous article 10 was annulled.
- ❖ The previous article 17 was converted into article 20 for the EU citizenship and the rights and duties of EU citizens.

Charter of Fundamental Rights of the European Union

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| <p>Article 10</p> | <p><i>1. Everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.</i></p> |
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Some relevant information about the Charter

- ❖ It was issued in 2000 and has been binding since 2009 with Lisbon Treaty.
- ❖ It is applied by the EU institutions, the organizations and by its Member States when they apply EU law.
- ❖ It reinforces the protection of the fundamental rights by making them more visible and clearer for the citizens.
- ❖ It includes all the rights that EU citizens enjoy and divides them **under 6 titles**: dignity, freedom, equality, solidarity, rights of citizens and justice.
- ❖ Article 10 that includes the right of freedom of religion is under **the title “FREEDOM”** and specifically in “freedom of thought, conscience and religion”.

| Directive 2000/78 |
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| <p>This directive was issued by the Council of the European Union in November 2000.</p> <p>It concerns the creation of a framework for equal treatment in employment and occupation. It provides for discrimination based on religion or beliefs that may undermine the reaching of EU’s goals and especially the achievement of a high level employment. That is why it promotes the principle of equal treatment and prohibits the direct or indirect discrimination based on religion or beliefs and the other sectors that are mentioned in the directive.</p> |

2. Case law of the European Court of Justice

| <u>Samira Achbita v. G4S Secure Solutions NV, C-157/15</u> |
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| <ul style="list-style-type: none"> • The applicant was working for this company, from which she was dismissed because she insisted on wearing the scarf which was forbidden, along with all the obvious symbols of religious, political or philosophical beliefs, by an unwritten rule. • She filed an action for direct discrimination which was dismissed by the local court and the same happened with the appeal. • A question has been referred to the Court for a preliminary ruling whether a matter of indirect discrimination was involved. • The Court ruled that an internal rule may constitute indirect discrimination under Article 2 (2) of Directive 2000/78 and if a disadvantageous treatment of some people due to a particular religion or certain beliefs is proved. |

| <u>Asma Bougnaoui v. Micropole SA, C-188/15</u> | |
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| <ul style="list-style-type: none"> • The applicant was fired by the company following a customer complaint about the Muslim scarf she wore. She had been aware of the relevant company policy since she was recruited that in the meetings with customers she would have to take off the scarf in order to observe the principle of neutrality. • An appeal was lodged for the decision not to award compensation and also to court rulings. • A question on the meaning of Article 4 paragraph 1 of Directive 2000/78 was raised on whether “it constitutes an essential and decisive professional requirement, because of the nature of a professional activity or the context in which it is carried out, the desire of an IT consultancy company customer to no longer be provided the IT services of that company by a worker who wears a Muslim scarf?”. • The Court has decided that it is not an essential and decisive professional requirement within the meaning of that provision. | |

| <u>Bundesrepublik Deutschland Stop / Y and Z, C-71/11 and C-99/11</u> | |
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| <ul style="list-style-type: none"> • The applicants are of Pakistani origin and belong to Ahmadi Muslim minority, which has not been recognized by the Muslims. • They asked for asylum in Germany because, according to the Pakistani Criminal Code, they face 3 years of imprisonment if they say they are Muslims, if they try to preach or spread their religion. • The asylum application was not accepted by the German authorities because they argued that restrictions on the exercise of their religion are not considered as persecution under the right of asylum. • The applicants complained that the attitude of the German authorities was against Directive 2004/83. • The Federal Administrative Court filed a preliminary question to the Court to explain religious persecution in line with the 2004 directive. • The Court has ruled that it does not constitute a violation of the right to religious freedom as an "act of persecution". The authorities should check whether the person concerned is in real danger by exercising this freedom. | |

B. Council of Europe

1. Legal Framework

| European Convention on Human Rights | |
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| Article 9 | <i>1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.</i> |

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| | <p><i>2. Freedom to manifest one's religion or beliefs shall be subject only to such limitation as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.</i></p> |
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Information about the ECHR

- ❖ It is the first convention of the Council of Europe.
- ❖ It was adopted in 1950 and is applied since 1953.
- ❖ It has been ratified from all the member states of EU.
- ❖ It applies in the national law of EU's members.
- ❖ With the passage of time more rights were added by adopting Protocols (e.g.. the right to peaceful enjoyment of property, the right to education and the right to free elections by secret ballot).
- ❖ The right of freedom of thought, conscience and religion includes the right of everyone to manifest freely their religion and the neutrality of the state. The state must not intervene in the internal relations of a religious community.
- ❖ Usually article 9 is taken in conjunction with article 14 which is about the prohibition of discrimination.
- ❖ In Protocol n.1 article 2 of the Convention there is another aspect of the freedom of religion, the right of parents to choose the education of their children in conjunction with their beliefs (also in article 14 paragraph 3 of the Charter of Fundamental Rights of the European Union).

2. Case Law of the European Court of Human Rights

| <u>Osmanoğlu and Kocabaş v. Switzerland, 29086/12, ECHR 2017</u> |
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| <ul style="list-style-type: none"> • Regarding parents who were fined for refusing to allow their daughters to take part in a compulsory mixed swimming lesson for religious reasons. • Prudent Muslims did not want their daughters to be in the same pool with boys in order for them to be introduced early in the mindset of their religion. • The Court has ruled against them by arguing that there is no violation of Article 9. • The reason for this is that the state takes care of the social inclusion of migrant children through collective activities. |

| <u>Adyan and Others v. Armenia, nos. 75604/11, 12 October 2017 (not final)</u> |
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| <ul style="list-style-type: none"> • The applicants requested to abstain from the military activities of the country and any other activity that had to do with the army. • The applicants' religion did not allow them to deal with anything related to the army and the war ("pacifists"). • They were convicted under the Criminal Code. • They argued that this conviction violates their right guaranteed by Article 9 and the |

Court agreed to this submission.

- The Court's landmark decision on military service and religious belief under Article 9 was [Bayatyan v. Armenia \(2003\)](#).

Hamidović v. Bosnia and Herzegovina, no. 57792/15, 5 December 2017

- In a trial against members of the Salafist Group, the applicant, as a member of the same group, was asked to provide evidence.
- He was asked to remove the "cap" he wore and refused to by saying that it was his religious duty to wear it.
- Because he refused to remove it a fine was imposed to which he appealed on the ground that it was against his right to manifest his religion.
- The appeal was dismissed by the Court.
- When he addressed the ECtHR, it ruled in his favor.
- It was the first case that the Court had to decide on the use of religious symbols in court while most cases related to the workplace.

Association for Solidarity with Jehovah's Witnesses and Others v. Turkey, no. 36915/10 and 8606/13, 24.05.2016

- It was not allowed to use an apartment as a place of worship in Jehovah's Witnesses as it was not provided for by law.
- According to the law, buildings were constructed where they functioned as places of worship for other religious communities inhabiting the country and had to meet different criteria. When this space was requested, the authorities informed them that there were no other available sites.
- Based on Articles 9 (Freedom of Thought, Conscience and Religion), 6 (Right to Fair Trial) and 11 (Freedom of Assembly and Association), the applicants complained of the injustice they suffered.
- The Court considered Article 9 enough to condemn the government for not having taken the necessary measures for all religious minorities within its territory.

Dimitras and Others v. Greece, no. 42837/06, 3269/07, 35793/07 and 6099/08, 3.06.2013

- The applicants were summoned to appear in court at different times and for different reasons and in accordance with the Code of Criminal Procedure they ought to be sworn in the Bible. Each time they were asked, they informed the Court that they did not belong to the Orthodox Christian religion.
- They complained that they had to unveil their non-Orthodox religious belief.
- They complained that Articles 9, 13 (right to an effective remedy), 8 (right to respect for private and family life) and 14 (non-discrimination) were violated. The Court found the violations of Articles 9 and 13 enough for a conviction.
- The Court reiterated that freedom of thought, conscience and religion is one of the foundations of democratic society and, as far as religion is concerned, freedom is an important part of the believer's identity, as it is also for atheists, skeptics, ignorant and indifferent.

Lautsi and Others v. Italy, no. 30814/06, 18 March 2011

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| <ul style="list-style-type: none"> • The first applicant posed a question to the school heads' meeting whether the religious symbols (specifically crosses) should be removed from the classrooms and it was decided to remain. • Referring to the administrative court, he complained of a violation of the principle of secularity based on Article 3 (principle of equality) and 19 (religious freedom) of the Italian Constitution and Article 9 of the Convention. It was rejected in accordance with Articles 118 and 119 of the Royal Decree. • The applicants complained that Article 2 Protocol 1 (right to education) and Article 9 (right to freedom of thought, conscience and religion) were violated. • The Court has stated that despite the different interpretations the cross may have, its religious interpretation is predetermined and beyond the fact that it conflicts with the secular beliefs of the first applicant, it may be emotionally disturbing to children who do not belong to a Christian religion or to no religion. • It concluded that there is no violation of Article 9 and Article 2 of Protocol 1. |
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| <p><u>Eweida and Others v. The United Kingdom, no. 48420/10, 59842/10, 51671/10 and 36516/10, 27.05.2013</u></p> |
| <ul style="list-style-type: none"> • The applicants (Ms. Eweida and Ms. Chaplin) complained of discrimination in the context of religion at their workplace as their employers informed them that the cross should not be apparent during work. • Their allegations were rejected by the employment court of the country. • They addressed to the Court claiming that national law does not adequately protect the right to manifest their religion by violating Article 9 in conjunction with Article 14. • With regard to Eweida (working with British Airways), the Court concluded that there had been a violation of Article 9 as local authorities did not protect her right to manifest her religion. • In the case of Chaplin, there was no violation of Article 9 as she was working in a hospital and there was a matter of public health and safety (possibility of harm). |

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| <p><u>Ahmet Arslan and Others v. Turkey, no. 41135/98, 4.10.2010</u></p> |
| <ul style="list-style-type: none"> • The applicants belonged to a religious group named Aczimendi tarikaty. They were arrested on charges of violating anti-terrorist legislation and wearing religious clothing publicly without any religious ceremony taking place. • The applicants, based on Article 9, complained that they had been convicted under criminal law because they manifested their religion. • The European Court of Human Rights ruled in favor of them. |

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| <p><u>Ebrahimian v. France, no. 64846/11, 26.02.2016</u></p> |
| <ul style="list-style-type: none"> • The applicant, of Muslim religion, was working in a national hospital and she was denied the renewal of her contract because she refused to take off the veil she was wearing and after patient complaints. • She complained that the decision not to renew her contract because of the religious symbol she wore was a violation of Article 9. • The Court did not find any violation of Article 9 as the constitutional law of the country |

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| imposes neutrality on civil servants. |
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National level

1. Legal Framework

| Constitution of Greece |
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| <ul style="list-style-type: none">Article 3 par. 1 states that <i>"the main religion in Greece is the religion of the Eastern Orthodox Church of Christ"</i>.The text of the Bible is kept unaltered (article 3 par. 3).In article 13 is stated that freedom of religion is inviolable (par. 1).The worship of any known religion is unhindered (par. 2).Proselytism is forbidden when it is done through unfair means (Kokkinakis v. Greece). |

| Other Legislation |
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| <ul style="list-style-type: none">Directive 2000/78 is integrated in Law 4443/2016.Law 1920/1991 "On Muslim Religious Officers": describes the procedure and the qualifications for the assignation of Mufti, as well as his duties, in what ways he ceases, for the establishment of the Hieratic Muslim Section, for the Conservator (takes over the duties of Mufti until a new one is appointed) etc.Law 4511/2018 "Amendment of article 5 of law 1920/1991": the duties of Mufti are amended and explained.Law 3512/2006 "Islamic Temple of Athens and other provisions": Establishment of the legal person "Governing Committee of the Islamic Temple of Athens" for the administration, management and maintenance of the mosque to be built, and other responsibilities such as Committee composition, , related tasks, sources of financing, mosque construction, and imam appointment of.Law 4301/2014 "Organization of the legal form of religious communities and their associations in Greece and other provisions of the General Secretariat of Religious Affairs and other provisions": recognizes the other religions (beyond Orthodox Christianity) within the country and recognizes the rights and obligations of religious communities. |

2. Case law of the Greek Supreme Administrative Court (Council of State)

| <u>660/2018 (teaching religion at school)</u> |
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| <ul style="list-style-type: none">The Council found the resolution of the Ministry of Education concerning the teaching of religion in classes of primary school and high school, unconstitutional.They concluded that this resolution of Ministry contradicts:<ul style="list-style-type: none">a) <i>Article 16 par. 2 of the Greek Constitution</i> ("education is the basic mission of the State and aims at the moral, intellectual, professional and physical education of the Greeks, the development of national and religious consciousness and their development into free and responsible citizens") because it prevents the development of the students' orthodox Christian consciousness that belong in the Orthodox Christian religion.b) <i>Article 13 par. 1 of the Constitution</i> ("freedom of religious conscience is |

inviolable. The enjoyment of civil and political rights does not depend on everyone's religious beliefs") as it unsettles the orthodox Christian consciousness the students shape in the family environment. It can also be considered to be proselytizing as it is capable of alienating them from their religious consciousness.

c) *Article 2 of Protocol 1 of the ECHR*, because it affects the right of parents to educate their children according to their own beliefs.

d) The constitutionally guaranteed principle of equality (Article 4 par. 1) and Article 14 (in conjunction with Article 9) of the ECHR, as the students that belong to the orthodox Christian dogma are deprived of their right to be taught exclusively the moral values and traditions of their religion, while the students that belong to other religions (Roman Catholic, Jewish, Muslim) have the possibility, according to the law, to be taught exclusively their religion's creed and even by teachers suggested from their religious community.

Websites

https://www.echr.coe.int/Documents/Convention_ENG.pdf
http://www.europarl.europa.eu/charter/pdf/text_en.pdf
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EL>
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>
<https://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis/overview>
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<https://eclj.org/right-to-asylum-the-court-of-justice-of-the-european-union-defines-religious-persecution-and-reinforces-freedom-of-religion>
<http://www.hri.org/docs/syntagma/artcl25.html#A3>

Third Country Nationals
Ioanna Tsatse

A. European Legislation

| Directive 2003/109 / EC on the status of third-country nationals who are long-term residents, Official Journal |
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| Long-term residents enjoy equal treatment with their nationals regarding: ¹ |
| <ul style="list-style-type: none"> ❖ paid employment and self-employment, ❖ education and vocational training, ❖ tax relief, ❖ freedom of association and the ability to register to workers' organizations, ❖ access to joint services and goods and home acquisition procedures and ❖ access to the entire territory of the State concerned. |
| The State may impose restrictions on equal treatment on ² : |
| <ul style="list-style-type: none"> ❖ education, ❖ social assistance, ❖ taxation, ❖ residence, ❖ public goods and ❖ participation in organizations. |
| The State may impose restrictions on the equal treatment of nationals regarding: ³ |
| <ul style="list-style-type: none"> ❖ access to paid employment or to independent professional activities, ❖ linguistic competence for access to education and ❖ equal treatment in terms of social assistance and protection. |

B. Italian Legislation⁴

| <i>Legislative Decree 286/1998 of 25 July 1999 codifying the provisions on immigration regulation and rules on the status of foreigners</i> |
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| <i>Case study: Case C-309/14</i> |
| <i>Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 30 June 2014 — Confederazione Generale Italiana del Lavoro (CGIL), Istituto Nazionale Confederale Assistenza (INCA) v Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Ministero dell'Economia e delle Finanze 10</i> |
| <i>The case in Italian courts</i> |
| <i>Case facts</i> |
| Ministerial Decision of 2011: The |

¹ <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex:32003L0109>, article 11, par. 1.

² Directive 2003/109/ EC, Article 11, par. 2.

³ Directive 2003/109/EC, Article 11, par. 3.

⁴ <http://eur-lex.europa.eu/legal-content/EN-EL/TXT/?uri=CELEX:62014CJ0309&from=EN>

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| | <p>application for the grant and renewal of a residence permit requires the payment of a fee of between EUR 80 and EUR 200, according to the joint decision of the <i>Ministero dell'Economia e delle Finanze</i> and the <i>Ministero dell'Interno</i> depending on the duration of the accommodation.</p> <p>Rehabilitation Fund: Funds reimbursement costs for foreigners in their countries of origin or provenance. The European Commission and the CGIL (Confederazione Generale Italiana del Lavoro) and the INCA (International Network on Culture and Arts), in addition to the fees provided for in the 2011 Ministerial Decree, will be given EUR 73,50, irrespective of the Duration of the residence permit.</p> <p>CGIL and INCA have requested the Tribunale amministrativo regionale per il Lazio (Lazio Regional Administrative Court) to annul the 2011 Ministerial Decree, supporting that <i>the fee to be paid by third-country nationals is unequal and / or disproportionate</i>.</p> |
| <i>Legal Context</i> | <p>The national court, by examining its compatibility with the provisions of European Union law on the basis of the judgment in <i>Commission v. Netherlands</i>, stated that the legislation of the Member State respects the principles set out in Directive 2003/109.</p> <p>The amount of the fees does not rise to an excessively high and disproportionate to the amount payable by the citizens of the State in order to obtain a corresponding title. As regards the decision of the Commission of Netherlands, the provisions of the legislation of the Kingdom of the Netherlands were held to be incompatible with the principles of Directive 2003/109, according to which the amount for a residence permit was almost equal to seven times the cost of the issue of a national identity card of those Member States.</p> <p>Doubts were voiced during the main proceeding pertaining to the compatibility of national provisions with the principles set in Directive 2003/109, since in Italy the cost of issuing an identity card is approximately EUR 10 and the lowest price fixed by the 2011 Ministerial Decree is EUR 80, leading</p> |

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| | to an overall burden on the third-country national 8 times more . |
| <i>The case in the Court of Justice of the European Union</i> | |
| <i>Question referred</i> | Do the principles laid down in Council Directive 2003/109/EC as subsequently amended and supplemented, preclude rules of national law, such as those laid down in Article 5(2-ter) of Legislative Decree No 286 of 25 July 1998, in that they provide that ‘the application for the issue and the renewal of the residence permit shall be subject to the payment of a fee, the amount of which shall be set at a minimum of EUR 80 and a maximum of EUR 200 by joint decree of the Ministry of the Economy and Finance and of the Ministry of the Interior which shall also lay down the conditions for the payment ...’ thereby fixing a minimum amount for the fee equal to around eight times the charge for the issue of a national identity card? |
| <i>Judgment of the European Court of Justice</i> | <p>The Court has held that <u>the Member States are free to make the issue of residence permits and residence permits under Directive 2003/109 subject to a margin of discretion. In accordance with the principle of proportionality, which is a general principle of European Union law, the measures implementing Directive 2003/109 require that they be proportionate and appropriate to the attainment of the objectives pursued and must not go beyond what is necessary to attain them.</u></p> <p>Consequently, although the Member States are allowed to link the issue of a residence permit to the collection of fees, the principle of proportionality imposes the amount at which those charges are fixed, as well as the other rights deriving from that status.</p> |

Operative

Council Directive 2003/109 / EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, as amended by Directive 2011/51 / EU of the European Parliament and of the Council of 11 May 2011 is contrary to national legislation such as that at issue in the main proceedings, which imposes on third-country nationals applying for the issue or renewal of residence permits in the Member State concerned a fee payment of between EUR 80 and 200, in so far as that fee is disproportionate to the purpose of that tax Directive and may impede the exercise of the rights recognized by it.

C. Greek legislation

| Law 3386/2005 refers to the entry, residence and social integration of third-country nationals in the Greek Territory. | |
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| <i>General conditions for residence rights for third-country nationals legally entering the country:</i> | <ul style="list-style-type: none"> • be in possession of a valid passport or other recognized travel document, • not to pose a risk to public safety and public health, • have full sickness insurance and • have the appropriate resources to be able to return to their country of origin.⁵ |
| <i>Application for a residence permit - Procedure</i> | The third-country national must, after entering the country, apply for a residence permit. He is invited for an interview by the Immigration Committee after having submitted his application for residence. The Secretary General of the Region, after taking into account the opinion of the Immigration Committee, grants it. The residence permit is valid for one year and the renewal is two years. ⁶ |
| <i>Conditions for acquiring the status of long-term resident</i> | <p>The long-term resident is the one who has been legally resident for the last 5 years, has stable resources and accommodation.</p> <p><u>Further criteria:</u> adequate knowledge of the Greek language, Greek history and Greek culture, according to a joint decision of the Ministers of Interior, Public Administration and Decentralization and National Education and Religious Affairs through special programs.⁷</p> |

| Rights of third country nationals according to Greek legislation |
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| <ul style="list-style-type: none"> • Same insurance rights as nationals • Social protection • Detained third-country nationals are informed in a language they understand and |

⁵ <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4cf78da42>, page 7, article 10.

⁶ See footnote 5, pages 8-9, articles 11 and 12.

⁷ See footnote 5, page 36, article 67.

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| acts 1 to 3 of Law 927/1979 are prosecuted on their own initiative. <ul style="list-style-type: none"> • has the possibility to leave the border and re-enter if the residence permit still applies⁸ | |
| Article 1 (L. 927/1979) | <i>Any person who incites, causes, exacerbates or exhorts acts or actions that may cause discrimination, hatred or violence against a person or group of persons identified by race, color, religion, genealogy, national or ethnic origin, sexual orientation, gender identity or disability in a manner that expose public order or poses a threat to the life, freedom or physical integrity of such persons shall be punished by imprisonment of three (3) months to three (3) years and with a fine of five to twenty thousand euros (€ 5,000 - 20,000).</i> |

| Obligations of third-country nationals according to Greek legislation | |
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| <ul style="list-style-type: none"> • Apply for a residence permit • Indicate the changes in his / her place of residence, his / her personal situation, the loss of a passport or other travel document, the loss of the residence card, the change of employment, and the employment contract with the relevant Aliens and Immigration Services • Must leave for his / her country of origin one day before his / her license expires unless he or she legally renews the license • If the application for a residence permit or renewal is not approved, he / she must leave Greece within 30 days. The one who violates the 30-day time limit, remaining in Greek territory and the one provided for in the uniform visa SCHENGEN the duration of his / her stay or his / her right to stay in the environment, he / she shall pay four times the amount of the prescribed permits per stay per year. Minors and expatriates are excluded. This amount is determined by decision of the Ministers of the Interior, Public Administration and Decentralization, Economy and Finance and Public Order.⁹ | |

D. Other pre-trial questions from other countries' courts

| Case C-579/13 (Official Journal of the European Union C 24/8¹⁰, 25.1.2014) | |
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| <i>Request for a preliminary ruling from the Centrale Raad van Beroep (Nederland) lodged on 15 November 2013 — P v Commissie Sociale Zekerheid Breda, S v College van Burgemeester en Wethouders van de gemeente Amstelveen.</i> | |
| <i>Referring court</i> | Centrale Raad van Beroep |
| <i>Parties to the main proceedings</i> | <i>Applicant: P</i> <i>Defendant: Commissie Sociale Zekerheid</i> |

⁸ <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4cf78da42>, page 37, article 71.

⁹ See footnote 8, pages 38-39, article 73.

¹⁰ . <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CN0579>

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| | <p>Breda</p> <p>&</p> <p><i>Applicant:</i> S</p> <p><i>Defendant:</i> College van Burgemeester en Wethouders van de gemeente Amstelveen</p> |
| <i>Questions referred</i> | <p>1. Must the aim and scope of Directive 2003/109/EC, or of Article 5 and/or of Article 1 thereof, be interpreted as meaning that the imposition of the civic integration obligation, under national law, on third-country nationals who have acquired long-term resident status, with penalties in the form of a system of fines, cannot be reconciled therewith?</p> <p>2. In answering the first question, is it relevant whether the civic integration obligation was imposed before long-term resident status was granted?</p> |

| Case C-257/13 | |
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| <i>Request for a preliminary ruling from the Tribunal des affaires de sécurité sociale des Bouches-du-Rhône (France) lodged on 13 May 2013 — Anouthani Mlalali v CAF des Bouches-du-Rhône¹¹</i> | |
| <i>Referring court</i> | Tribunal des affaires de sécurité sociale des Bouches-du-Rhône |
| <i>Parties to the main proceedings</i> | <p><i>Applicant:</i> Anouthani Mlalali</p> <p><i>Defendant:</i> CAF des Bouches-du-Rhône</p> |
| <i>Question referred</i> | Must Article 11 of Directive 2003/109/EC of 25 November 2003 be interpreted as precluding the requirements laid down by Articles L.512 and D.512-2 of the Code de la sécurité sociale français (French Social Security Code)? |

Requirements for the integration of third-country nationals: the first judgment of the Court of Justice of the European Union¹²

For the first time, in P and S¹³ the Court dealt with the question of when a Member State may require migrants to take integration courses within the framework of the EU Directive on the Residence of Third-Country Nationals.

¹¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CN0257>

¹² Article from Steve Peers: <http://eulawanalysis.blogspot.gr/2015/06/integration-requirements-for-third.html>.

¹³ <http://curia.europa.eu/juris/document/document.jsf?text=&docid=164725&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=517419>.

According to the Court, Article 5 and Article 11 thereof do not preclude national legislation such as that at issue in the main proceedings, which requires third-country nationals who already have the status of long-term resident to pass a citizen's integration examination on a fine, provided that the means of implementing that obligation are not such as to jeopardize the attainment of the objectives pursued by that directive.

This decision, according to **Steve Peers**, has a wider interest as the EU Directive on family reunification for non-EU citizens also provides that Member States should lay down the conditions for membership. On the other hand, the EU's right to free movement does not provide for Member States to impose such conditions on EU citizens or their family members. This situation is not foreseen in the EU-Turkey Association Agreement.

The above decision opens the wording of the Long-Term Directive, which states that Member States may require third-country nationals to comply with conditions of incorporation in accordance with national law. The case concerned non-EU citizens who already had long-term resident status under the directive, but the Dutch legislation still requires them to take citizenship courses and punish them with a fine each time they fail.

Judgment of the Court

According to the Court, the obligation to undertake **integration courses for third-country nationals does not violate the Directive**. Most specifically:

1. it clearly allows **a state of integration to be enforced prior** to the acquisition of the long-term resident status,
2. this requirement **does not violate the principle of equal treatment** provided for in the Directive, since Netherlands nationals may have knowledge of Dutch society and language.

Following the analysis of the Court of Auditors, it focused on whether the national rules are lower than the effectiveness of the Directive. **Main objective of the Directive: integration of third-country nationals.** The Court has held that **learning the national language** and the host country could facilitate communication with Dutch citizens and encourage **the interaction and development** of social relations. Moreover, acquiring knowledge of the Dutch language makes it easier to find a **job**. Therefore, the integration obligation has contributed to the achievement of the objectives of the Directive.

The Court, **initially**, wanted to deal with the limits to the Member States as regards to:

1. the level of knowledge required for the examinations,
2. the accessibility of the courses and the material necessary to prepare for the exam,
3. the amount of registration fees,
4. specific individual cases such as age, illiteracy or the level of education.

However, the Court **seemed to be more concerned about the level of fines**, which was quite high, and would be imposed for any failure or even when the third-country national did not pass the exam within the required time.

This aspect of the system violated EU law, although it was left to the national court to apply the Court's judgment in practice.

Comments

The Court's ruling makes it clear that **Member States have the option of imposing on third-country nationals the completion of all procedures for long-term resident status on the basis of the payment of the amount for participation in the tests and then their success.** The Dutch government is obliged to reduce these fees as it turns out. This decision is more conducive to families of less well-off immigrants who will be struggling to pay for the exam.

The Court has managed to strike a balance between ensuring that immigrants have to join society and the need to avoid integration examinations by excluding third-country nationals who are genuinely assimilated by society due to examinations despite honest efforts.

Case C-115/15

Central issue

if a third-country national residing in a Member State of which the European Union is a national can continue to reside in that Member State despite the permanent abandonment by the Union citizen of that State; The subsequent divorce proceedings.

In the present case, the husband's departure and subsequent divorce take place in the context of domestic violence.

The Legal Framework

A. The Treaty on the Functioning of the EU

Article 20 TFEU

- It establishes citizenship of the Union and states that every citizen of the Union is a national of a Member State.
- The citizens of the Union have, inter alia, "the right to move and reside freely within the territory of the Member States". (Article 20 (2)).

Article 21 TFEU

- Although every citizen of the Union has the right to move and reside freely within the territory of the Member States, this right is exercised "subject to the limitations and conditions laid down in the Treaties and the provisions adopted for their implementation"

| B. Directive 2004/38 | |
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| Recital 15 | "Legal protection should be provided to family members in the event of the death of the Union citizen, divorce, marriage annulment or termination of the registered relationship. Therefore, on the basis of the principle of respect for family life and human dignity, under certain conditions to avoid abuse, steps should be taken to ensure that in such cases the family members already residing in the territory of the host Member State shall retain their right of residence exclusively on a personal basis ", |
| Article 7 | <p>1. All citizens of the Union shall have the right to reside in the territory of another Member State for more than three months if:</p> <ul style="list-style-type: none"> a. they are employed or self - employed in the host Member State, or b. have sufficient resources for themselves and their family members, so as not to burden the host Member State's social welfare system during their stay, as well as full sickness insurance cover in the host Member State <p>2. The right of residence provided for in paragraph 1 shall extend to members of the family who are not nationals of a Member State when accompanying or visiting the Union citizen in the host Member State and the person concerned meets the conditions laid down in paragraph 1.</p> |
| Article 13 (2) | <p>"Divorce, marriage annulment or the expiry of a registered partnership shall not entail the loss of the right of residence of Union citizen's family members who are not nationals of a Member State in the following cases:</p> <ul style="list-style-type: none"> a. if the marriage or registered partnership lasted for at least three years, up to one year in the host Member State, until the divorce or marriage annulment or the expiry of the registered partnership ...; b. if the custody of the children of the Union citizen is entrusted to the spouse or to a partner who is not a national of a Member State on the |

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| | <p>basis of an agreement between the spouses or partners as referred to in Article 2 or by a judicial decision;</p> <p>c. if it is dictated by particularly difficult situations, such as where a family member has been the victim of domestic violence while married or married, or</p> <p>d. if the spouse or partner who is not a national of a Member State enjoys, on the basis of an agreement between the spouses or partners referred to in Article 2 or a judicial decision, the right to communicate with a minor Provided that the court considered that the visits had to take place in the host Member State and for as long as necessary.</p> |
| Article 16 (1) | 'Union citizens who have been legally resident for five consecutive years in the host Member State shall be granted the right of permanent residence in their territory. Under Article 2 (2), the rule also applies to family members who are not nationals of a Member State and who have legally resided with the Union citizen in the host Member State for a continuous period of five years'. |
| C. Regulation (EEC) No 1612/68 | |
| Article 12 | "The children of a national of a Member State who is or has been employed in the past in the territory of another Member State shall be admitted to general education, apprenticeship and vocational training courses under the same conditions as nationals of that State, provided that such children reside in Its territory". |

The facts

- **NA** is a Pakistani national. In September 2003 **she married KA** in Karachi (Pakistan). The latter, after going to Germany where he resided, acquired **German nationality**.
- In March 2004 the couple moved **to the United Kingdom** and on 7 November 2005, **NA obtained a residence permit** valid until September 21, 2009.
- **The relations between the two spouses were, however, eroded** to such an extent that NA was repeatedly a victim of domestic violence. Following an attack on NA (who was then pregnant for more than five months), in October 2006, KA left the family home. In December 2006, KA finally left the United Kingdom and returned to Pakistan.

- While residing in the United Kingdom, KA was employed either as an employed or self-employed person. On 5 December 2006, KA requested the British authorities to withdraw NA's residence permit on the ground that he had been permanently resident in Pakistan. CA requested to be informed about the cancellation of the SE's residence permit.
- KA alleged that the NA had been dealt with via talaq, issued in Karachi on 13 March 2007. In September 2008, NA initiated divorce proceedings in the United Kingdom. The irrevocable divorce decree was issued on 4 August 2009 and the custody of the two children of the couple, **MA and IA**, was assigned to NA.
- The MA was born on 14 November 2005 and IA on 3 February 2007. Both have German citizenship and attend UK schools respectively from January 2009 and from September 2010.
- **NA submitted an application for a permanent residence permit in the United Kingdom, which was rejected.**
- Against that refusal, **NA lodged an appeal.** The court of first instance dismissed the appeal. However, on February 22, 2013 the Appellate Court, **the Upper Tribunal (Immigration and Asylum Chamber)**, reformed the first instance judgment.
- That court first of all confirmed that NA was no longer deprived of her right of residence under Article 13 (2) of Directive 2004/38 on the ground that, at the date of the divorce, KA was not in the United Kingdom
- However, the same court considered that **NA had a right of residence in that Member State under Article 20 TFEU, in accordance with the principles laid down in the Ruiz Zambrano judgment (C 34/09) and, secondly, Article 12 of Regulation No 1612/68.**
- Lastly, in view of the fact that **the refusal to grant NA to a UK right of residence would oblige her MA and IA children to leave that Member State with NA as their exclusive custody, the Upper Tribunal Immigration and Asylum Chamber, considering that the impending removal of MA and IA from the United Kingdom would undermine the rights they derive from Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome T On 4 November 1950, the action brought by NA was upheld on the basis of that provision.**
- NA filed an appeal against that decision with regard to the non-recognition of a right of residence under Article 13 (2) of Directive 2004/38. The United Kingdom authorities also appealed against that decision in respect of NA's right of residence, on the one hand, Article 20 TFEU and Article 12 of Regulation No 1612/68. On the other hand, the chapter of the ECHR relating to Article 8 of the ECHR was not infringed
- In this context, by two judgments delivered on 17 July 2014 and 25 February 2015 respectively, the **Court of Appeal (England & Wales) (Civil Division) decided to Stay the proceedings and refer four questions to the Court of Justice for a preliminary ruling.**

The questions referred for a preliminary ruling by the Court of Appeal (England & Wales) (Civil Division)

1. Is a former Union citizen of a Member State who is a third-country national able to show that the former spouse of the Union exercised rights deriving from the Treaties in the host Member State at the time of their divorce in order to retain a right of residence under Of Article 13 (2) of Directive 2004/38?
2. Does a Union citizen have a right of residence under Union law in a host Member State under Articles 20 TFEU and 21 TFEU where the only State within the Union to which the citizen is entitled is his State of nationality but the competent Court has ruled that the transfer of the citizen from the host Member State to the state of his / her nationality would constitute an infringement of his / her rights under Article 8 of the ECHR or Article 7 of the Charter of Fundamental Rights of the Union?
3. If the Union citizen is a child, does the parent exercising the exclusive custody of that child have a right of residence in the host Member State if the child should accompany the parent when the parent is removed from the host Member State?
4. Does the child have the right of residence in the host Member State in accordance with Article 12 of Regulation ... No 1612/68 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union if his or her father A citizen of the Union who has worked in the host Member State, has ceased to reside in the host Member State before the child has been trained in that State?

According to the United Kingdom Government, the second and third questions put by the national court are hypothetical and irrelevant to the outcome of the dispute, since NA and its children have already been granted a right of residence in the United Kingdom on the basis of Article 8 ECHR. **According to the Netherlands Government**, that recognition renders hypothetical the questions submitted in their entirety.

The first question referred for a preliminary ruling

Article 13 of Directive 2004/38 regulates the maintenance of the right of residence of family members in the event of divorce, annulment of marriage or the expiry of the registered partnership.

In the present case, the Court is called upon to rule on the situation referred to in Article 13 (2) of Directive 2004/38, namely the possibility for family members of a Union citizen who are not nationals of a Member State to maintain, in the event of a divorce, Right of residence "if this is dictated by particularly difficult situations, such as if the family member became the victim of domestic violence

In that situation, must the Union citizen of a non-Member State be resident in the host Member State until the date of the divorce decree so that the third-country national can retain her right of residence?

The second and third questions

Those two questions may be examined together in the light of the judgment in **Alokpa and Moudoulou (C 86/12)**.

The criteria for assessing the obligation to leave the territory of the Union

- **As German nationals, the two children of the NA have a clear right to live in Germany.** Consequently, if the children in question had to leave the territory of the United Kingdom to establish themselves in Germany, their mother would have an allied right of residence in that Member State, **in accordance with the judgment in Ruiz Zambrano (C 34/09) .**
- Otherwise, MA and IA would be obliged to leave the territory of the Union in order to follow their mother, probably in Pakistan, a possibility that would deprive them of the possibility of actually enjoying, in the essential part Their rights as a citizen of the Union.
- In the present case, it appears that although NA is a German citizen, NA's children have no connection with the Member State in which they have never lived and who do not know the language. **The Member State in which the children in question built their nationality is the United Kingdom, where they were born and where they started their schooling.**
- In its written observations, the Commission itself notes that, although NA's daughters enjoy "German citizens who have an unconditional right to reside in Germany, they can not reasonably be expected of themselves or of their mother to live in that country" On that basis the national courts held that they could not be removed from the United Kingdom in Germany because that would constitute a violation of the ECHR. '

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| The fourth question referred for a preliminary ruling |
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A correct interpretation of Article 12 of Regulation No 1612/68, a child and, consequently, the custodian of a parent enjoying a right of residence in the host Member State, where the other parent who is a citizen of the Union and has Worked in that Member State has ceased to reside there before the child has been trained in that Member State.

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| Operative |
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1. Article 13 (2) 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 Of the Member States must be interpreted as meaning that **a national of a non-Member State who has been divorced a citizen of the Union and who during the marriage was the victim of acts of domestic violence by the second he can not retain his right of residence in the host Member State under that provision if the divorce proceedings have been opened following the departure of the spouse who is a citizen of the Union from that Member State.**

2. Article 12 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as meaning that **a child and a parent who is a national of a non-Member State and who exercises sole custody Of a child enjoys a right of residence in the host Member State under that provision where, as in the case in the main proceedings, the other parent is a citizen of the Union and has**

worked in that Member State, but has ceased to live in that State before the schooling of the child begins in that State.

3. Article 20 TFEU must be interpreted as meaning that, on that basis, **no right of residence is granted in the host Member State or to a minor Union citizen who has been resident since birth in that Member State of which he is not a national or to a third- , Who exercises sole custody of the minor in question**, where those persons enjoy a right of residence in that Member State on the basis of a provision of secondary Union law.

Article 21 TFEU must be interpreted as meaning that that minor is entitled to reside in the host Member State if it satisfies the conditions laid down in Article 7 (1) of Directive 2004/38, which is a matter for the applicant court. If that is the case, that same provision allows the parent who actually exercises the care of the citizen of that Union to reside with that citizen in the host Member State.

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