



A Union citizen who has been the subject of an expulsion decision cannot enjoy a new right of residence in the territory of the host Member State until he or she has genuinely and effectively terminated his or her residence there.

Such an expulsion decision cannot be deemed to have been complied with in full merely because that Union citizen has physically left that territory within the period prescribed in that decision for his or her voluntary departure

By decision of 1 June 2018, the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands; ‘the State Secretary’) found that FS, a Polish national, was residing illegally in the territory of the Netherlands on the ground that he no longer satisfied the conditions laid down in Article 7 of Directive 2004/38, ¹ relating to the right of residence for more than three months, and ordered him to leave the territory of the Netherlands. By decision of 25 September 2018 (‘the expulsion decision’), the State Secretary declared unfounded the objection which FS had lodged against the previous decision. He set a period of four weeks for voluntary departure, expiring on 23 October 2018, beyond which FS could be expelled on the ground that he was illegally resident.

In any event, FS left the Netherlands by 23 October 2018 at the latest, since the German police arrested him on that date on suspicion of shoplifting. FS stated that he was resident in Germany, near the Netherlands border. FS also stated that, owing to his dependence on marijuana, he travelled to the Netherlands on a daily basis to purchase it. On 22 November 2018, he was apprehended in a supermarket in the Netherlands on suspicion of theft. Following his arrest and detention by the police, the State Secretary placed FS in administrative detention with a view to expelling him to his country of origin. The grounds stated for that decision were the risk of FS evading the monitoring of foreign nationals or avoiding or impeding preparations for his departure or the expulsion procedure.

By judgment delivered in December 2018, the rechtbank Den Haag, zittingsplaats Groningen (District Court, The Hague, sitting in Groningen, Netherlands), dismissed as unfounded the action brought by FS against the detention decision. FS lodged an appeal against that judgment before the referring court, the Raad van State (Council of State, Netherlands). That court observes that the expulsion decision adopted against FS is an expulsion decision within the meaning of Article 15 of the Residence Directive. ² According to that court, the lawfulness of FS’s detention following his return to the Netherlands depends on the issue of whether he had a right of residence in the Netherlands once again on the date on which he was placed in detention. Consequently, the Court has been asked to rule on the circumstances in which a Union citizen who has been the subject of an expulsion decision adopted on grounds other than public policy, public security or public health may rely on a new right of residence in the host Member State.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77; ‘the Residence Directive’).

² That provision provides, inter alia, that certain procedures provided for in Chapter VI of that directive, entitled ‘Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health’ (the procedures laid down in Articles 30 and 31), are to apply by analogy to all decisions restricting free movement of Union citizens and their family members on grounds other than public policy, public security or public health.

In its Grand Chamber judgment, the Court holds that a decision to expel a Union citizen from the territory of the host Member State, adopted on the basis of Article 15(1) of the Residence Directive on the ground that that Union citizen no longer enjoys a temporary right of residence in that territory under that directive, cannot be deemed to have been complied with in full merely because that Union citizen has physically left that territory within the period prescribed by that decision for his or her voluntary departure. The Court also states that, in order to enjoy a new right of residence under Article 6(1) of that directive in the same territory, the Union citizen who has been the subject of such an expulsion decision must not only have physically left the territory of the host Member State, but must also have genuinely and effectively terminated his or her residence there, with the result that, upon his or her return to that territory, his or her residence cannot be regarded as constituting in fact a continuation of his or her previous residence in that territory.

Findings of the Court

To reach that conclusion, in the first place, the Court examines whether the mere physical departure of a Union citizen from the host Member State is sufficient in order for an expulsion decision taken against that Union citizen under Article 15(1) of the Residence Directive to be regarded as having been complied with in full. In that regard, the Court observes that the temporal effects of such an expulsion decision are not apparent from the wording of that directive. Next, having regard to the objective pursued by that provision and its context and the aim of that directive, the Court observes that the possibility offered to the host Member State of expelling Union citizens who are no longer legally resident in its territory is consistent with the specific objective provided for by the Residence Directive, which is to prevent Union citizens and their family members from becoming an unreasonable burden on the social assistance system of the host Member State during their temporary residence. The Court also points out that an interpretation which consists of stating that the mere physical departure of the Union citizen is sufficient for the purposes of complying with an expulsion decision would result in him or her being allowed to rely on multiple successive temporary periods of residence in a Member State in order, in fact, to reside there permanently, even though such a citizen did not satisfy the conditions for a right of permanent residence laid down in the Residence Directive. According to the Court, such an interpretation would be inconsistent with the overall context of the Residence Directive, which introduced a gradual system as regards the right of residence in the host Member State, which culminates in the right of permanent residence.

Furthermore, the Court considers that the grant of a minimum period of one month from notification of the expulsion decision to comply with that decision,³ inasmuch as it enables the citizen concerned to prepare his or her departure, supports an interpretation of Article 15(1) of the Residence Directive to the effect that an expulsion decision is complied with when that citizen has terminated genuinely and effectively his or her residence in that territory.

In the second place, the Court provides useful indications to the referring court to enable it to determine, on the basis of an overall assessment of all the circumstances of the dispute before it, whether the Union citizen in question has genuinely and effectively terminated his or her residence in the host Member State, in such a way that the expulsion decision to which he was subject has been complied with in full. In that regard, the Court states first of all that to oblige such a citizen, in all cases, to leave the host Member State for a minimum period, for example three months, in order to be able to rely on a new right of residence in the Member State, under Article 6(1) of that directive, would be to render the exercise of that fundamental right subject to a limitation not provided for either by the Treaties or by that directive. However, the length of the period spent by that person outside the territory of the host Member State following the adoption of the expulsion decision may be of some importance, in so far as the longer the person concerned is absent from the host Member State, the more that absence attests to the genuine and effective nature of the end of his or her residence. In addition, among the other useful indications provided by the Court, the latter emphasises the importance of all the factors evidencing a break in the links between the Union citizen concerned and the host Member State, such as the termination of a lease contract or

³ Provided for in Article 30(3) of the Residence Directive and applicable by analogy to a decision taken on the basis of Article 15 of that directive.

moving house or flat. The Court states that the relevance of such factors must be assessed by the competent national authority in the light of all the specific circumstances characterising the particular situation of the Union citizen concerned.

In the last place, the Court sets out the consequences of failure to comply with an expulsion decision. On that matter, the Court states that if it follows from such a verification that the Union citizen has not genuinely and effectively terminated his or her temporary residence in the territory of the host Member State, that Member State is not obliged to adopt a new expulsion decision on the basis of the same facts which gave rise to the expulsion decision already taken against that citizen, but may rely on that latter decision in order to oblige him or her to leave its territory. However, the Court points out that a material change in circumstances enabling the Union citizen to satisfy the conditions laid down in Article 7 of the Residence Directive, concerning the right of residence for more than three months, would deprive the expulsion decision of which he or she is the subject of any effect and would require, despite the failure to comply with that decision, that his or her residence on the territory of the Member State concerned be regarded as legal. With respect to the possibility for a Member State to verify whether such an expulsion decision has been complied with in full, despite the limitations imposed by EU law on such controls, certain provisions of the Residence Directive are intended to enable the host Member State to ensure that the temporary residence of nationals of other Member States in its territory is carried out in a matter consistent with that directive.⁴ Finally, the Court states that an expulsion decision taken against a Union citizen under Article 15(1) of the Residence Directive cannot be enforced against him or her where, under Article 5 of that directive, which provides for the right of entry to the territory of the host Member State, that citizen travels to that territory on an *ad hoc* basis for purposes other than to reside there.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁴ That is true, inter alia, of Article 5(5) of the Residence Directive, according to which the Member State may require the person concerned to report his or her presence within its territory within a reasonable and non-discriminatory period of time, since failure to comply with that obligation, like a failure to comply with the registration obligation, may make the person concerned liable to non-discriminatory and proportionate sanctions.