



Reports of Cases

Case C-457/12

S.

v

**Minister voor Immigratie, Integratie en Asiel
and**

Minister voor Immigratie, Integratie en Asiel

v

G.

(Request for a preliminary ruling from the Raad van State (Netherlands))

(Articles 20 TFEU, 21(1) TFEU and 45 TFEU — Directive 2004/38/EC — Right to move and reside freely within the territory of the Member States — Beneficiaries — Right of residence of a third-country national who is a family member of a Union citizen in the Member State of which that citizen is a national — Union citizen residing in the Member State of which he is a national — Professional activities — Regular travel to another Member State)

Summary — Judgment of the Court (Grand Chamber), 12 March 2014

1. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Beneficiaries — Family members of a Union citizen who are third-country nationals — Not included*

(Art. 21 TFEU; European Parliament and Council Directive 2004/38)

2. *Freedom of movement for persons — Workers — Union citizen residing in the territory of the Member State of which he is a national and who regularly travels to another Member State as a worker — Right of residence of family members — Condition — Dissuasive effect of a refusal of a right of residence on the effective exercise of the right to freedom of movement — Determination by the national court*

(Art. 45 TFEU)

1. Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States must be interpreted as not precluding a refusal by a Member State to grant a right of residence to a third-country national who is a family member of a Union citizen, where that citizen is a national of and resides in that Member State but regularly travels to another Member State in the course of his professional activities.

Those provisions of that directive confer an actual right of residence on Union citizens and a derived right on their family members only where Union citizens exercise their right to freedom of movement by establishing themselves in a Member State other than the one of which they are nationals.

(see paras 34, 35, operative part)

2. Article 45 TFEU must be interpreted as conferring on a third-country national who is the family member of a Union citizen a derived right of residence in the Member State of which that citizen is a national, where the Union citizen resides in that Member State but regularly travels to another Member State as a worker within the meaning of that provision, if the refusal to grant such a right of residence discourages the worker from effectively exercising his rights under Article 45 TFEU, which it is for the referring court to determine.

In that regard, the fact that the third-country national in question takes care of the Union citizen's child may be a relevant factor to be taken into account by the national court. However, the mere fact that it might appear desirable that the child be cared for by the third-country national who is the direct relative in the ascending line of the Union citizen's spouse is not sufficient in itself to constitute such a dissuasive effect.

(see paras 43, 44, 46, operative part)