



Reports of Cases

Joined Cases C-331/16 and C-366/16

K. v Staatssecretaris van Veiligheid en Justitie

and

H.F. v Belgische Staat

(Requests for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Middelburg and by the Raad voor Vreemdelingenbetwistingen)

(Reference for a preliminary ruling — Citizenship of the European Union — Right to move and reside freely within the territory of the Member States — Directive 2004/38/EC — Second subparagraph of Article 27(2) — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Expulsion on grounds of public policy or public security — Conduct representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society — Person whose asylum application has been refused for reasons within the scope of Article 1F of the Geneva Convention or Article 12(2) of Directive 2011/95/EU — Article 28(1) — Article 28(3)(a) — Protection against expulsion — Residence in the host Member State for the previous ten years — Imperative grounds of public security — Meaning)

Summary — Judgment of the Court (Grand Chamber), 2 May 2018

- Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Public policy — Concept*
(European Parliament and Council Directive 2004/38, Arts 27 and 28)
- Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Public security — Concept*
(European Parliament and Council Directive 2004/38, Arts 27 and 28)
- Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Measures taken on grounds of public policy or public security — National restriction on the freedom of movement and residence of a person who was the subject of a decision excluding him from refugee status under Article 1F of the Convention Relating to the Status of Refugees or Article 12(2) of Directive 2011/95 — Lawfulness*
(European Parliament and Council Directive 2004/38, Art 27(2), first para.)

4. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Conduct representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society — Person who was the subject, in the past, of a decision excluding him from refugee status under Article 1F of the Convention Relating to the Status of Refugees or Article 12(2) of Directive 2011/95 — Circumstance having no determining effect — Obligation to assess the personal conduct of the individual concerned*

(European Parliament and Council Directive 2004/38, Art. 27(2), second para)

5. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Protection against expulsion — Circumstances to be taken into account before adoption of expulsion decision*

(European Parliament and Council Directive 2004/38, Art. 28(1))

6. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Protection against expulsion — Condition — Residence for 10 years preceding the expulsion decision — Condition for application — Person concerned having a right of permanent residence*

(European Parliament and Council Directive 2004/38, Art. 28(3)(a))

1. Accordingly, the concept of ‘public policy’, in Articles 27 and 28 of Directive 2004/38 has been interpreted in the Court’s case-law as meaning that recourse to that concept presupposes, in any event, the existence, in addition to the social disturbance which any infringement of the law involves, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (judgment of 24 June 2015, *H.T.*, C-373/13, EU:C:2015:413, paragraph 79 and the case-law cited).

(see para. 41)

2. As regards the concept of ‘public security’, it is clear from the Court’s case-law that this concept covers both the internal and external security of a Member State (judgment of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraph 43). Internal security may be affected by, inter alia, a direct threat to the peace of mind and physical security of the population of the Member State concerned (see, to that effect, judgment of 22 May 2012, *I.*, C-348/09, EU:C:2012:300, paragraph 28). As regards external security, that may be affected by, inter alia, the risk of a serious disturbance to the foreign relations of that Member State or to the peaceful coexistence of nations (see, to that effect, judgment of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraph 44).

(see para. 42)

3. See the text of the judgment.

(see para. 47)

4. Article 27(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, 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, must be interpreted as meaning that the fact that a European Union citizen or a

third-country national family member of such a citizen, who applies for a right of residence in the territory of a Member State, has been the subject, in the past, of a decision excluding him from refugee status under Article 1F of the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 and supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, or Article 12(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, does not enable the competent authorities of that Member State to consider automatically that the mere presence of that individual in its territory constitutes, whether or not there is any risk of re-offending, a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, capable of justifying the adoption of measures on grounds of public policy or public security.

The finding that there is such a threat must be based on an assessment, by the competent authorities of the host Member State, of the personal conduct of the individual concerned, taking into consideration the findings of fact in the decision to exclude that individual from refugee status and the factors on which that decision is based, particularly the nature and gravity of the crimes or acts that he is alleged to have committed, the degree of his individual involvement in them, whether there are any grounds for excluding criminal liability, and whether or not he has been convicted. That overall assessment must also take account of the time that has elapsed since the date when the crimes or acts were allegedly committed and the subsequent conduct of that individual, particularly in relation to whether that conduct reveals the persistence in him of a disposition hostile to the fundamental values enshrined in Articles 2 and 3 TEU, capable of disturbing the peace of mind and physical security of the population. The mere fact that the past conduct of that individual took place in a specific historical and social context in his country of origin, which is not liable to recur in the host Member State, does not preclude such a finding.

In accordance with the principle of proportionality, the competent authorities of the host Member State must, in addition, weigh the protection of the fundamental interest of society at issue, on the one hand, against the interests of the person concerned in the exercise of his right to freedom of movement and residence as a Union citizen and in his right to respect for private and family life.

(see paras 65-67, operative part 1)

5. Article 28(1) of Directive 2004/38 must be interpreted as meaning that, where the measures envisaged entail the expulsion of the individual concerned from the host Member State, that State must take account of, *inter alia*, the nature and gravity of the alleged conduct of the individual concerned, the duration and, when appropriate, the legality of his residence in that Member State, the period of time that has elapsed since that conduct, the individual's behaviour during that period, the extent to which he currently poses a danger to society, and the solidity of social, cultural and family links with that Member State.

(see para. 76, operative part 2)

6. Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that it is not applicable to a European Union citizen who does not have a right of permanent residence in the host Member State, within the meaning of Article 16 and Article 28(2) of that directive.

(see para. 77, operative part 2)