

Joined Cases Tomasz Ziolkowski (C-424/10) and Barbara Szeja and Others (C-425/10) v Land Berlin [2011] ECR I-14035

Facts: The first applicant was a Polish national residing in Germany. He had obtained a residence permit on humanitarian grounds. The second applicant was a Polish national residing in Germany. She had also obtained a residence permit on humanitarian grounds.

The applicants had requested that their residence permits be extended, and where applicable, be supplemented with a certificate of permanent residence under EU law. Both applications were eventually refused, and both were informed of measures which would be adopted requiring their forcible return to their Member State of origin if they did not leave German territory within a certain period following the date on which the decisions of the Land Berlin refusing their requests became definitive.

The relevant authority contended that they could not extend their residence permits as the applicants were unable to support themselves economically in respect of national law. Under EU law, too, the relevant authority concluded, it was possible to recognise their entitlement to a right of permanent residence under European Union law, since they were not in employment or able to prove that they could support themselves economically.

Held: Under Directive 2004/38, citizens who had resided legally for a continuous period of five years in the host Member State would have the right of permanent residence there. While EU law did not provide what 'resided legally' meant, national law should interpret this in accordance with the spirit of Directive 2004/38, which was to facilitate and strengthen the exercise of the primary and individual right to move and reside freely within the territory of the Member States that is conferred directly on each citizen of the Union. Therefore, as long as the applicant met the conditions in the Directive, they had met the requirements under EU law to obtain permanent residence.

Moreover, periods of residence completed by a national of a non-Member State in the territory of a Member State before the accession of the non-Member State to the European Union would be considered for the purpose of the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38, provided those periods were completed in compliance with the conditions laid down in Article 7(1) of the directive.