

**Case C-127/08 Metock and others v Minister for Justice, Equality and Law Reform,
judgment of 25 July 2008**

Facts: The case concerned four third country nationals who had been refused political asylum in Ireland. They had subsequently married EU citizens who were not Irish nationals but who lived in Ireland. Following their refusal for asylum, they were also rejected for residence cards as spouses of Union citizens on the basis that they did not satisfy the condition of prior lawful residence in another Member State laid down in Irish law.

The applicants contended that under Directive 2004/38, legislative measures of a Member State which made the right of residence of a national of a non-member country subject to the conditions of prior lawful residence in another Member States and acquisition of the status of spouse of a citizen of the Union before his/her arrival in the host Member State would be prohibited.

Held: The Directive does not make its application conditional on the beneficiaries, family members of a citizen of the Union, having previously resided in a Member State. In Case C 109/01 *Akrich* [2003] ECR I 9607, the Court had posited that in order to benefit from the rights provided for in the Directive, the national of a non-member country who is the spouse of a Union citizen must be lawfully resident in a Member State when he moves to another Member State to which the citizen of the Union is migrating or has migrated. This interpretation no fell to be reversed.

Rather, the benefit of such rights could not depend on the prior lawful residence of such a spouse in another Member State, as this would seriously obstruct the freedoms guaranteed by the Treaty. This did not mean unfettered freedom though, as the Directive allowed Member States to restrict the right of entry and residence of Union citizens and their family members on grounds of public policy, public security or public health.

Nevertheless, given the foregoing analysis, the Court concluded that a national of a non-member country, the spouse of a Union citizen, who accompanies that citizen to or joins that citizen in the host Member State, may enjoy rights conferred by that directive irrespective of when and where their marriage took place and of how the national of a non-member country entered the host Member State.