

## SUMMARY

# ECJ 20 June 2024, case C-540/22 (Staatssecretaris van Justitie en Veiligheid), work and residence permit

## *SN and Others – v – Staatssecretaris van Justitie en Veiligheid, Dutch case*

### Summary

The Member State in which the works are carried out by third-country posted workers, may impose an obligation to obtain a residence permit. The ECJ's summary of the case can be found [here](#).

### Questions

Must the freedom to provide services, guaranteed by Articles 56 and 57 TFEU, be interpreted as meaning that third-country workers who are posted to a Member State by a service provider established in another Member State must automatically be recognised as having a 'derived right of residence'?

Must Article 56 TFEU be interpreted as precluding a piece of legislation of a Member State which provides that, where an undertaking established in another Member State carries out, in that first Member State, a supply of services the duration of which exceeds three months, that undertaking is obliged not only to declare the supply of services to the authorities of that first Member State, but also to obtain a residence permit for each third-country worker which it intends to post to that Member State?

Must Article 56 TFEU be interpreted as precluding a piece of national legislation of a Member State pursuant to which (i) the period of validity of the residence permit which may be granted to a third-country worker posted to that Member State may not, in any event, exceed a period determined by the piece of national legislation in question, which may thus be shorter than the period needed to perform the service for which that worker is posted, (ii) the period

of validity of that residence permit is limited to the period of validity of the work and residence permit held by the person concerned in the Member State in which the service provider is established, and (iii) the issuing of the residence permit requires the payment of fees in an amount greater than the amount of the fees payable for the issuing of a certificate of lawful residence to a Union citizen?

## **Ruling**

Articles 56 and 57 TFEU must be interpreted as meaning that third-country workers who are posted to a Member State by a service provider established in another Member State must not automatically be recognised as having a ‘derived right of residence’, either in the Member State where they are employed or in the Member State to which they are posted.

Article 56 TFEU must be interpreted as not precluding a piece of legislation of a Member State which provides that, where an undertaking established in another Member State carries out, in that first Member State, a supply of services the duration of which exceeds three months, that undertaking is obliged to obtain in the host Member State a residence permit for each third-country worker which it intends to post to that first Member State, and which provides that, in order to obtain that permit, that undertaking is to declare beforehand the supply of services in respect of which those workers are to be posted and is to communicate to the authorities of the host Member State the residence permits which those workers hold in the Member State where it is established, as well as their employment contracts.

Article 56 TFEU must be interpreted as not precluding a piece of legislation of a Member State pursuant to which (i) the period of validity of the residence permit which may be granted to a third-country worker posted to that Member State may not, in any event, exceed a period determined by the piece of national legislation in question, which may thus be shorter than the period needed to perform the service for which that worker is posted, (ii) the period of validity of that residence permit is limited to the period of validity of the work and residence permit held by the person concerned in the Member State in which the service provider is established, and (iii) the issuing of the residence permit requires the payment of fees in an amount greater than the amount of the fees payable for the issuing of a certificate of lawful residence to a Union citizen, provided that: first of all, the initial period of validity of that permit is not manifestly too short to meet the needs of the majority of service providers; next, it is possible to renew the residence permit without having to meet excessive formal requirements; and, lastly, that amount approximately corresponds to the administrative costs generated by the processing of an application for such a permit.

**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2024-06-20

**Case number:** C-540/22