

<b>Subject-matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 2, 9, 10, 11, 13, 14 and 35 of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	29.04.2015
<b>Deciding body (in original language)</b>	<i>Hämeenlinnan hallinto-oikeus/Tavastehus förvaltningsdomstol</i>
<b>Deciding body (in English)</b>	Hämeenlinna Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	Hämeenlinnan HAO 29.04.2015 15/0359/3 ECLI:FI:HAMHAO:2015:15.0359.3
<b>Parties</b>	A et al. v the Central Finland Police Department [ <i>Keski-Suomen poliisilaitos/polisinrättningen i Mellersta Finland</i> ]
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/hao/2015/hameenlinnan_hao20150359">www.finlex.fi/fi/oikeus/hao/2015/hameenlinnan_hao20150359</a> (summary of the case)
<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) no. 301/2004, as amended
<b>Key facts of the case</b> (max. 500 chars)	Note that this executive summary has the purpose to make us understand: <ol style="list-style-type: none"> <li>1. the facts of the case (so the “real life story”)</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol>

	<p>A, who was a third-country national, was married to B, who was an Estonian citizen and lived in Finland. The couple had met and later married in A's home country. At the time of their marriage, B had already lived in Finland for several years and had also registered his right of residence. After the marriage A and her son moved to Finland and were issued with residence cards for a family member of an EU citizen for five years. Having lived together in Finland for three months, A and B had separated. The police cancelled the residence cards because it held that the couple's family life had ended and the requirements for obtaining a residence card were no longer met. The police also suspected that the marriage had been contracted in order to circumvent immigration regulations.</p> <p>According to the Aliens Act a fixed-term residence card is cancelled if the grounds for issuing the card no longer exist, or the card was obtained by knowingly providing false information about relevant facts, or by other abuse of rights. Section 161e of the Aliens Act contains provisions on retaining the right of residence of family members in the event of divorce.</p> <p>The administrative court based its decision on the Aliens Act, Directive 2004/38/EC and the case law of the CJEU (C-40/11 <i>Iida</i>; C-244/13 <i>Ogieriakhi</i>).</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>Although A and B lived separately, their marriage had not been officially terminated by a decision of the competent authority, and, in fact, there was no longer any divorce petition pending. A was thus still regarded as a family member of an EU citizen and the residence cards could not be cancelled solely on grounds that the couple no longer led a family life. The provisions in the Aliens Act on the conditions for retaining the right of residence of a family member in the event of divorce were not applicable in this case.</p> <p>Considering that the couple had known each other for 18 months before their marriage, that B had supported A financially when A was still living in her home country, and also considering the reasons for their separation (i.e., quarrels between the spouses, B's heavy use of alcohol and his criminal activities), the administrative court held that the marriage had not been contracted solely for the purpose of obtaining the right of residence of a family member of an EU citizen. A's and her son's residence cards could not be cancelled on grounds of abuse of rights.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The decision clarified the rules as to how separation or divorce affects the right of residence of a family member. As long as the marriage is in force, a residence card cannot be cancelled solely on grounds that the family life has ended because of separation.</p>

<b>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</b>	<p>The administrative court quashed the decision made by the police.</p>
<b>Key quotations in original language and translated into English with reference details (max. 500 chars)</b>	<p>(p. 8 of the decision): Ulkomaalaislain 154 §:n 1 momentin 1 kohdan mukaan aviopuoliso on unionin kansalaisen perheenjäsen. Lainkohta vastaa perheenyhdistämisdirektiivin (2004/38/EY) 2 artiklan 2 kohdan a alakohtaa. Unionin tuomioistuimen oikeuskäytännön perusteella aviopuolisostaan pysyvästi erillään asuvaa kolmannen maan kansalaista pidetään unionin kansalaisen perheenjäsenenä, jos toimivaltainen viranomais ei ole päättänyt heidän avioliittoaan. A:n ja B:n yhteinen perhe-elämä on päättynyt A:n muutettua B:n luota kesällä 2013, mutta heitä ei ole tuomittu avioeroon, eikä tällaista hakemusta ole edes esitetty olevan enää vireillä. Unionin tuomioistuimen oikeuskäytäntö huomioon ottaen valittajien oleskelukortteja ei ole voitu avioliiton voimassa ollessa peruuttaa ulkomaalaislain 165 §:n 1 momentin 3 kohdan nojalla pelkästään sillä perusteella, että A:n ja B:n yhteinen perhe-elämä on päättynyt. Näin ollen myöskään ulkomaalaislain 161e §:n säännökset oleskeluoikeuden säilymisestä avioliiton purkautumisen yhteydessä eivät tule tässä asiassa sovellettaviksi.</p> <p>According to section 154(1)(1) of the Aliens Act a spouse is a family member of an EU citizen. The provision corresponds to Article 2(2)(a) of Directive 2004/38/EC. According to the case law of the CJEU, a third-country national who lives permanently separated from his or her spouse, is regarded as a family member of an EU citizen, if their marriage has not been terminated by the competent authority. The family life between A and B had ended when A had moved away in the summer of 2013. However, the couple had not been granted a divorce, and, in fact, there was no longer any divorce petition pending. Bearing in mind the case law of the CJEU, while the marriage is in force, the applicants' residence cards could not be cancelled on the basis of section 165(1)(3) of the Aliens Act solely on grounds that A and B no longer led a family life. Consequently, section 161e of the Aliens Act on retaining the right of residence in the event of divorce was not applicable in this case.</p>
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	<p>No.</p>