

<b>Subject-matter concerned</b>	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - Articles 3, 31 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>	31/01/2011
<b>Deciding body (in original language)</b>	The High Court
<b>Deciding body (in English)</b>	The High Court
<b>Case number (also European Case Law Identifier (<a href="#">ECLI</a>) where applicable)</b>	[2011] IEHC 32
<b>Parties</b>	Justinia Izmailovic and Mahmoud Elmersy Ads v Commissioner of An Garda Siochana, Minister for Justice, Equality and Law Reform and the Attorney General
<b>Web link to the decision (if available)</b>	<a href="http://www.courts.ie/Judgments.nsf/0/5A4CC9278C675FE08025782C0052CEA6">http://www.courts.ie/Judgments.nsf/0/5A4CC9278C675FE08025782C0052CEA6</a>
<b>Legal basis in national law of the rights under dispute</b>	Article 40.4.2 of the Irish Constitution; Sections 2(2) and 58(1) of the Civil Registrations Act 2004; Articles 2(1) and 24 of the European Communities (Free Movement of Person) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)
<b>Key facts of the case</b>	The first named applicant, Justinia Izmailovic, is a Lithuanian national, who came to Ireland in 2010 and registered as a self-employed

(max. 500 chars)	<p>painter/decorator with the Companies Registration Office. The second named applicant, Mahmoud Elmorsy Ads, is an Egyptian national, who unsuccessfully applied for asylum in Ireland in 2008, and was issued a deportation order on November 5<sup>th</sup>, 2010. When he failed to present at the Garda National Immigration Bureau on foot of that deportation order, he was classified as an evader. The two applicants met online in early 2009 and lived together following Ms. Izmailovic's arrival into the state in May 2010. On 12<sup>th</sup> January 2011, they were due to be married at the Civil Registration Office in Cavan. However, two members of the Garda National Immigration Bureau arrived before the marriage solemnisation ceremony and submitted a letter of objection to the Register, "on the grounds that it was a marriage of convenience." Mr. Ads was arrested pursuant to section 5(1) of the 1999 Immigration Act, detained at Cloverhill Prison, and the marriage did not take place.</p>
<b>Main reasoning / argumentation</b>  (max. 500 chars)	<p>The High Court judge noted that the central reason for the arrest was to prevent the marriage from taking place, because Mr. Ads would have acquired EU residence rights conferred by Directive 2004/38/EC as a result. Justice Hogan queried whether the proposed marriage, even if it was a marriage of convenience, would have been legal under Irish law and concluded that "the marriage of Ms. Izmailovic and Mr. Ads would have been a valid marriage so far as Irish law is concerned."</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>The Court found that had the marriage taken place, Mr. Ads would have been able to avail of residence rights (provided for in the Directive), as a spouse of an EU national. However, this might have been limited by article 35 of the Directive, pertaining to powers to withdraw rights conferred by the Directive, in the case of a marriage of convenience. Article 24 of the Free Movement of Persons Regulations 2006 specifies that if a marriage of convenience is suspected, a review should be undertaken by a senior official within the Department of Justice. However, this review can only take place after the "fact of solemnisation."</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Court deemed that Mr Ads's arrest was unlawful and ordered his immediate release, and recommended that if the law is found to be unsatisfactory in this area, the Oireachtas or the Union legislature should address these questions.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p>"[...] the review of whether the marriage is a marriage of convenience must, of necessity, take place <i>after</i> the event and must also be hedged in with appropriate procedural safeguards. It follows that, no matter how well intentioned, An Garda Síochána are not empowered to prevent the solemnisation of a marriage on the grounds that they suspect - even with very good reason - that the marriage is one of convenience. Such a marriage would be, in any event, for the reasons stated above, a valid marriage for all purposes <i>other</i> than EU Treaty rights. The question of whether the non-EU (or, as the case may be, a non-EEA spouse) could be deprived of the <i>prima facie</i> benefits of the marriage for the purposes of the 2006 Regulations is one which is committed to a senior official of the Minister by</p>

	Article 21 of the Regulations in the manner envisaged by Article 31 of the Directive.” [para. 69, italics in judgment]
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	No