

<b>Subject-matter concerned</b>	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article 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>	24 May 2010
<b>Deciding body (in original language)</b>	Qorti Ċivili Prim' Awla (Ġurisdizzjoni Kostituzzjonali)
<b>Deciding body (in English)</b>	First Hall Civil Court (Constitutional Jurisdiction)
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	54/2008
<b>Parties</b>	Ogunyemi Kehinde Olusegum & Sandra Wetterich vs Director of Public Registry and the Attorney General Ogunyemi Kehinde Olusegum u Sandra Wetterich <i>kontra</i> Direttur Registru Pubbliku u l-Avukat Generali
<b>Web link to the decision (if available)</b>	Cases can be found through a search function on the Justice Services website: <a href="http://www.justiceservices.gov.mt/courtservices/Judgements/search.aspx?func=all">http://www.justiceservices.gov.mt/courtservices/Judgements/search.aspx?func=all</a>
<b>Legal basis in national law of the</b>	Article 32(c) of the Constitution of Malta <sup>1</sup> - respect for private and family life

<sup>1</sup> Constitution of Malta, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>.

<b>rights under dispute</b>	
<b>Key facts of the case</b> (max. 500 chars)	<ol style="list-style-type: none"> <li>1. Olusegum and Wetterich wished to get married. Mr. Olusegum was a third country national whose visa had expired and subsequent requests for extension were denied in 2007. Ms. Wetterich was a German national studying in Malta. They met in 2004 and decided to marry in 2007. They applied with the Public Registry for the marriage banns to be published. Marriage banns are posted in a public place within the Marriage Registry office building and in a place where official acts are usually posted in the town in which each of the persons to be married reside, usually the notice Boards of the Local Council office and/or of the local parish Church. Once the banns are published the Marriage Registrar will issue a certificate that the banns have been so published. No marriage may be celebrated without the issuance of the certificate of the publication of the banns. The request for the publication of the banns was denied by the Marriage Registrar as Mr. Olusegum did not have a valid visa, consequently the marriage could not take place.</li> <li>2. The case was filed on the basis of Article 43 of the Treaty establishing the European Community (now Article 49 TFEU) and Article 7(2) and Article 24 of Directive 2004/38/EC, together with Article 32 of the Constitution of Malta on the right to private and family life, Article 8 and 12 of the European Convention on Human Rights.</li> </ol>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The applicants argued that the rights of establishment under the TFEU and the right of family members of EU Nationals to reside freely in another State, together with the right to family life protection under the Constitution and the ECHR, were breached by the Public Registry's refusal to issue the marriage banns.</p> <p>The respondents counter-argued that Article 43 of the Treaty establishing the European Community (now Article 49 TFEU) only gave the right to EU nationals to reside in another Member State and this right was not breached, as Wetterich continued to live in Malta. In addition, Olusegum did not yet qualify as "<i>family member</i>" under Directive 2004/38/EC.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>The Court examined the right to family life under the Constitution, ECHR and the jurisprudence of local Courts and ECtHR. The Court agreed with the respondents' argument that the decision of the Public Registry did not breach Wetterich's rights under Article 43 (now 49) of the Treaty.</p> <p>The Court said that although it is true that the Directive gives the right to EU citizens to reside freely within the territory of another Member States and this right should also be also granted to their family members, irrespective of nationality, the applicant does not</p>

	<p>qualify as a <i>“family member”</i>. The Court added that the Directive also states that for those persons who do not fall into the definition of family member then it is up to the Member State, on the basis of its national legislation, to decide whether entry and residence could be granted. The Court concluded that the Maltese authorities had already made that analysis and that there was no discrimination or prejudice in the criteria applied by the authorities in taking that decision. The pleas were rejected by the Court and the judgement was decided against the applicants.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The pleas were rejected by the Court and the judgement was decided against the applicants. The case clarified that third country nationals without a valid visa or residence permit cannot marry in Malta even when the intended spouse is an EU national residing regularly in Malta.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>“Għalkemm il-premessi d-Direttiva tittratta l-kwistjoni ta’ persuni who are not included in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, jingħad ukoll li huwa the host Member State on the basis of its own national legislation li jrid jiddeciedi whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.</i></p> <p>Kif diġa’ rajna, dawn il-konsiderazzjonijiet saru mill-awtoritajiet Maltin u fil-kriterji adottati minnhom ma hemm l-ebda preġudizzju fil-konfront tar-rikorrent Olusegum.”</p> <p>“Although the preambles in the Directive address the situation of persons who are not included in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, it is also states that it is the host Member State on the basis of its own national legislation that decides whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.</p> <p>As we have already seen, these examinations were carried out by the Maltese authorities and there has been no discrimination in the</p>

	criteria adopted in relation to Olusegum”
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	No.