

Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 10 and 27 of Directive 2004/38/EC <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	30 June 2015.
Deciding body (in original language)	Kúria.
Deciding body (in English)	Curia (Supreme Court).
Case number (also European Case Law Identifier (ECLI) where applicable)	2/2015. KJE.
Parties	The decision was taken under a judicial unification procedure that aims to unify the interpretation of certain laws in Hungary. The Curia initiates a judicial unification procedure in cases where judicial practice is not unanimous on the interpretation of the law. No parties were involved.
Web link to the decision (if available)	http://www.kuria-birosag.hu/hu/joghat/22015-szamu-kje-hatarozat

Legal basis in national law of the rights under dispute	<p>Article 18(1) point b) of Act II of 2007 on the admission and right of residence of third country nationals.¹</p> <p><i>“Unless otherwise prescribed in this Act, new residence permits or the extension of existing permits shall be refused or, if already issued, shall be withdrawn from the person:</i></p> <p><i>b) who have disclosed false information or untrue facts to the competent authority in the interest of obtaining the right of residence, or misled the competent authority in respect of the purpose of residence.”</i></p>
Key facts of the case (max. 500 chars)	At the request of the Attorney General, the Curia initiated a judicial unification process in view of the different interpretations of the rules on the issuance of residence permits to family members of EU citizens who are third country nationals. Some courts had ruled that disclosing false information or untrue facts to the authorities resulted in rejection of residence application or the withdrawal of an existing residence permit only where the claimant acted with intent. By contrast, instead of granting these powers of discretion to the authorities (fault-based liability), other courts found that stating untrue facts or disclosing false information in an application would automatically result in refusal or withdrawal of the residence permit of the family member, irrespective of the claimant’s intention (strict-liability approach).
Main reasoning / argumentation (max. 500 chars)	The General Attorney stated that in public administrative proceedings the authorities shall presume that the claimant acts in good faith, with the burden of proof for bad faith resting with the authorities. In the procedures for issuing residence permit to a third country national family member of an EU citizen residing in Hungary, therefore, the authorities must prove that the claimant knew the information to be false or untrue. ²
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Article 35 of 2004/38/EC Directive provides broad options for Member States in respect of the instruments they choose to apply to combat residence permit fraud. It is the decision of the national legislator to impose strict liability or fault-based liability in cases where the claimant provides false information or untrue facts. In addition, the grammatical = interpretation of the Hungarian law will decide which form of liability (fault-based or strict liability) the authorities must enforce.
Results (e.g. sanctions) and key consequences or	The Curia stated that the information and facts required to issue a residence permit to a third country national family member of an EU citizen are well-known to the claimant, as they cover his/her personal circumstances (e.g. family relation to the EU citizen, status of employment, salary, etc.). It therefore ruled that disclosing false information or untrue facts should result in automatic application of the

¹ Hungary, Act II of 2007 on the admission and right of residence of third country nationals (2007. évi II. törvény a harmadik országbeli állampolgárok beutazásától és tartózkodásától), 5 January 2007, Article 18(1) point b), available at: https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700002.TV.

² Hungary, Act CXL of 2004 on the general rules of administrative proceedings and services (2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól), 17 April 2006, Article 6(2), available at: https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0400140.TV.

implications of the case (max. 500 chars)	<p>consequences, i.e. refusal of the claim or revoking the existing residence permit. The Curia found that it was not an unnecessary restriction of the rights of family members and EU citizens since the Directive urges Member States to take effective measures against fraudulent behaviours in such procedures. The Curia, therefore, adopted the strict liability approach.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>Paragraph III.1. of the Decision:</p> <p><i>“Az objektív jogkövetkezmény végső soron azt eredményezi, hogy a kérelmezőtől a saját ügyében olyan körülmények között kell eljárnia, amelyek kizárják részéről a hamis adatközlést. Eszerint a kérelmező felelőssége - a kérelmére indult eljárásban, a személyi körülményeit érintő adatszolgáltatások és tényközlések tekintetében - a tudatállapotától függetlenül fennáll.”</i></p> <p><i>“The objective legal consequences established by the Act require the claimant to show prudent behaviour that guards against disclosing false information. Therefore, the claimant’s liability – in a procedure initiated at his/her request and regarding information about his/her personal circumstances – is independent from his/her state of mind.”</i></p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>No.</p>