

## JUDGMENT OF THE COURT

25 July 2002

**in Case C-459/99 (Reference for a preliminary ruling from the Conseil d'État): *Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v État belge*<sup>(1)</sup>**

***(Third country nationals who are the spouse of a Member State national — Requirement for a visa — Right of entry for spouses not in possession of identity documents or a visa — Right of residence for spouses who have entered unlawfully — Right of residence for spouses who have entered lawfully but whose visa has expired when they apply for a residence permit — Directives 64/221/EEC, 68/360/EEC and 73/148/EEC and Regulation (EC) No 2317/95)***

(2002/C 233/04)

(Language of the case: French)

*(Provisional translation; the definitive translation will be published in the European Court Reports)*

In Case C-459/99: Reference to the Court under Article 234 EC by the Conseil d'État (Belgium) for a preliminary ruling in the proceedings pending before that court between *Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX)* and *État belge*, on the interpretation of Articles 1(2), 3(3) and 9(2) of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117), Articles 3 and 4 of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II), p. 485), Articles 3 and 6 of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14) and Council Regulation (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (OJ 1995 L 234, p. 1), the Court, composed of: G.C. Rodríguez Iglesias, President, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, J.-P. Puissochet, M. Wathelet, R. Schintgen and J.N. Cunha Rodrigues (Rapporteur), Judges; C. Stix-Hackl, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 25 July 2002, in which it has ruled:

1. On a proper construction of Article 3 of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions

on movement and residence within the Community for workers of Member States and their families, Article 3 of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services and Council Regulation (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States, read in the light of the principle of proportionality, a Member State may not send back at the border a third country national who is married to a national of a Member State and attempts to enter its territory without being in possession of a valid identity card or passport or, if necessary, a visa, where he is able to prove his identity and the conjugal ties and there is no evidence to establish that he represents a risk to the requirements of public policy, public security or public health within the meaning of Article 10 of Directive 68/360 and Article 8 of Directive 73/148.

2. On a proper construction of Article 4 of Directive 68/360 and Article 6 of Directive 73/148, a Member State is not permitted to refuse issue of a residence permit and to issue an expulsion order against a third country national who is able to furnish proof of his identity and of his marriage to a national of a Member State on the sole ground that he has entered the territory of the Member State concerned unlawfully.
3. On a proper construction of Articles 3 and 4(3) of Directive 68/360, Articles 3 and 6 of Directive 73/148 and Article 3(3) of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, a Member State may neither refuse to issue a residence permit to a third country national who is married to a national of a Member State and entered the territory of that Member State lawfully, nor issue an order expelling him from the territory, on the sole ground that his visa expired before he applied for a residence permit.
4. On a proper construction of Articles 1(2) and 9(2) of Directive 64/221, a foreign national married to a national of a Member State has the right to refer to the competent authority envisaged in Article 9(1) of that directive a decision refusing to issue a first residence permit or ordering his expulsion before the issue of the permit, including where he is not in possession of an identity document or where, requiring a visa, he has entered the territory of a Member State without one or has remained there after its expiry.

<sup>(1)</sup> OJ C 47 of 19.2.2000.