

**Czech Republic – Nejvyšší správní soud (Supreme Administrative Court, “the Court”) Judgement
No. 1 As 58/2013 - 43 of 2nd October 2013
Directive 2004/38/EC of the European Parliament and of the Council**

The complainant, a Vietnamese national, resided the Czech Republic unauthorized for at least a year before filing an application for a stay permit. With her application, she submitted a marriage certificate proving she married a Czech national shortly before. Because the competent authorities, after qualifying the complainant's union with her husband as a marriage of convenience, refused to issue the permit, and the action the complainant brought to the Prague City Court was dismissed, she brought a complaint to the Court.

The complainant claimed, *inter alia*, that her marriage could not be regarded as one of convenience. She claimed that the facts which emerged over the course of the proceedings, regarding the reality of her union with her husband (language barrier, seldom spending time together and insufficient knowledge of her husband's health condition and recent hospitalization) complies with the modern idea of marriage. According to the complainant, marriage no longer serves the main purpose of founding a family and raising children (as Czech family law then suggested).

The Court stated that both Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic and the Directive 2004/38/EC provide the Czech Republic with the option to refuse, terminate or withdraw certain rights conferred by relevant law in the case of abuse of rights or fraud. The Court found no significant error in the findings of facts made by the competent authority and agreed that all available information suggests the complainant entered a marriage of convenience in order to evade the law. The decision to refuse the complainant stay was therefore right, regardless of whether her marriage satisfies the requirements set out by private law; in public law sphere, characterizing the marriage as one of convenience, and thus fraudulent, is sufficient.

The Court dismissed the complaint as unfounded.