

- (b) Is Article 20 TFEU to be interpreted as precluding a Member State from refusing to grant to a national of a non-member country — whose spouse is a Union citizen — residence in the Member State of residence of that spouse, who is a national of that Member State, even in the case where that Union citizen is not dependent on the national of a non-member country for his or her subsistence? (*Heiml and Maduiké* cases)
- (c) Is Article 20 TFEU to be interpreted as precluding a Member State from refusing to grant to a national of a non-member country — who has reached the age of majority and whose mother is a Union citizen — residence in the Member State of residence of the mother, who is a national of that Member State, even in the case where it is not the Union citizen who is dependent on the national of a non-member country for her subsistence but rather that national of a non-member country who is dependent on the Union citizen for his subsistence? (*Kokollari* case)
- (d) Is Article 20 TFEU to be interpreted as precluding a Member State from refusing to grant to a national of a non-member country — who has reached the age of majority and whose father is a Union citizen — residence in the Member State of residence of the father, who is a national of that Member State, even in the case where it is not the Union citizen who is dependent on the national of a non-member country for his subsistence but rather the national of a non-member country who receives subsistence support from the Union citizen? (*Štević* case)

2. If any of the questions under 1 is to be answered in the affirmative:

Does the obligation on the Member States under Article 20 TFEU to grant residence to nationals of non-member countries relate to a right of residence which follows directly from European Union law, or is it sufficient that the Member State grants the right of residence to the national of a non-member country on the basis of its law establishing such a right?

3. (a) If, according to the answer to Question 2, a right of residence exists by virtue of European Union law:

Under what conditions, exceptionally, does the right of residence which follows from European Union law not exist, or under what conditions may the national of a non-member country be deprived of the right of residence?

- (b) If, according to the answer to Question 2, it should be sufficient for the national of a non-member country to be granted the right of residence on the basis of the law of the Member State concerned which establishes such a right:

Under what conditions may the national of a non-member country be denied the right of residence, notwithstanding an obligation in principle on the Member State to enable that person to acquire residence?

4. In the event that Article 20 TFEU does not prevent a national of a non-member country, as in the situation of Mr Dereci, from being denied residence in the Member State:

Does Article 13 of Decision No 1/80 of 19 September 1980 on the development of the Association, drawn up by of the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, or Article 41<sup>(1)</sup> of the Additional Protocol, signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, which, according to Article 62 thereof, forms an integral part of the Agreement establishing an Association between the European Economic Community and Turkey, preclude, in a case such as that of Mr Dereci, the subjection of the initial entry of a Turkish national to stricter national rules than those which previously applied to the initial entry of Turkish nationals, even though those national provisions which had facilitated the initial entry did not enter into force until after the date on which the aforementioned provisions concerning the association with Turkey entered into force in the Member State in question?

<sup>(1)</sup> OJ 1972 L 293, p. 4.

### Action brought on 3 June 2011 — Kingdom of Spain v Council of the European Union

(Case C-274/11)

(2011/C 219/16)

Language of the case: Spanish

#### Parties

*Applicant:* Kingdom of Spain (represented by: N. Díaz Abad, Agent)

*Defendant:* Council of the European Union

#### Form of order sought

— annul Council Decision 2011/167/EU; <sup>(1)</sup>

— order the Council of the European Union to pay the costs.

#### Pleas in law and main arguments

1. **Misuse of powers since recourse was had to enhanced cooperation** although the purpose is not to achieve integration of all the Member States — the mechanism having been used instead to avoid negotiating with a Member State, imposing upon it an opt-out solution — and although the objectives pursued in this instance could have been achieved by means of a special agreement as provided for in Article 142 of the European Patent Convention. <sup>(2)</sup>

2. **Failure to respect the judicial system of the EU** in that no dispute resolution system is provided for in relation to certain legal rights subject to EU law.
3. **In the alternative**, should the Court find that it is appropriate in this instance to have recourse to enhanced cooperation and that it is possible to establish substantive rules for legal rights subject to EU law without making provision for a dispute resolution system in relation to those rights, the Kingdom of Spain submits that the necessary conditions for enhanced cooperation are not met for the following reasons:
- 3.1. **infringement of Article 20(1) TEU**, since in this instance enhanced cooperation is not a last resort and does not fulfil the objectives provided for in the TEU and since areas are referred to which are not within the scope of enhanced cooperation as they are exclusive competence of the EU.
- 3.2. **infringement of Article 326 TFEU**, since enhanced cooperation in this instance infringes the principle of non-discrimination and undermines the internal market and economic, social and territorial cohesion, constituting discrimination in trade between Member States and distorting competition between them.
- 3.3. **infringement of Article 327 TFEU**, since the enhanced cooperation does not respect the rights of the Kingdom of Spain, which is not participating in it.

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(<sup>1</sup>) Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ 2011 L 76, p. 53).

(<sup>2</sup>) Convention on the Grant of European Patents of 5 October 1973.