



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

8 May 2013*

(Citizenship of the Union — Article 20 TFEU — Right of residence of third-country nationals who are family members of a Union citizen who has not exercised his right of freedom of movement — Fundamental rights)

In Case C-87/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour administrative (Luxembourg), made by decision of 16 February 2012, received at the Court on 20 February 2012, in the proceedings

Kreshnik Ymeraga,

Kasim Ymeraga,

Afijete Ymeraga-Tafarshiku,

Kushtrim Ymeraga,

Labinot Ymeraga

v

Ministre du Travail, de l'Emploi et de l'Immigration,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, G. Arestis, J.-C. Bonichot, A. Arabadjiev and J. L. da Cruz Vilaça, Judges,

Advocate General: P. Mengozzi,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 23 January 2013,

after considering the observations submitted on behalf of:

— Mr Ymeraga and Others, by O. Lang, avocat,

— the Luxembourg Government, by C. Schiltz, P. Frantzen and L. Maniewski, acting as Agents,

* Language of the case: French.

- the Belgian Government, by T. Materne and C. Pochet, acting as Agents,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the Danish Government, by C. Vang, acting as Agent,
- the German Government, by T. Henze and N. Graf Vitzthum, acting as Agents,
- the Polish Government, by M. Szpunar and B. Majczyna, acting as Agents,
- the European Commission, by D. Maidani and C. Tufvesson, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 20 TFEU.
- 2 The request has been made in proceedings between Mr Kreshnik Ymeraga, Mr Kasim Ymeraga and Mrs Afijete Ymeraga-Tafarshiku ('Mr and Mrs Ymeraga') and Mr Kushtrim and Mr Labinot Ymeraga (the parents and brothers respectively of the first applicant) and the ministre du Travail, de l'Emploi et de l'Immigration (the Minister for Labour, Employment and Immigration) ('the Minister') concerning the Minister's decision refusing to grant Mr and Mrs Ymeraga, Mr Kushtrim Ymeraga and Mr Labinot Ymeraga a right of residence in Luxembourg and ordering them to leave Luxembourg.

Legal context

European Union law

Directive 2003/86/EC

- 3 Article 1 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) provides as follows:

'The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.'

- 4 According to Article 3(3) of that directive:

'This Directive shall not apply to members of the family of a Union citizen.'

Directive 2004/38/EC

- 5 Article 2 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives

64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77 and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34), entitled ‘Definitions’, states as follows:

‘For the purposes of this Directive:

- (1) “Union citizen” means any person having the nationality of a Member State;
- (2) “Family member” means
...
(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);
- (3) “Host Member State” means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.’

6 Article 3 of Directive 2004/38, entitled ‘Beneficiaries’, provides as follows:

‘1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

- (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

...

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.’

Luxembourg law

7 The Law of 29 August 2008 on the freedom of movement of persons and on immigration (Mémorial A 2008, p. 2024, ‘the Law on freedom of movement’) is intended to transpose Directives 2003/86 and 2004/38 into Luxembourg law.

8 Under Article 6 of that law:

‘(1) Union citizens shall have the right of residence in the territory for a period of longer than three months provided they satisfy one of the following conditions:

1. they work in an employed or self-employed capacity;
2. they have sufficient resources for themselves and their family members as defined in Article 12 not to become a burden on the social assistance system and have sickness insurance cover;

3. they are enrolled at a private or public establishment, accredited by the Grand-Duchy of Luxembourg in accordance with the legislative provisions and rules in force, for the principal purpose of following a course of study or, within that context, vocational training, while guaranteeing that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system and have sickness insurance cover.

(2) A Grand-Ducal Regulation shall specify the resources required at points 2 and 3 of paragraph (1) above, and the manner in which proof of those resources is to be furnished.

...'

9 Article 12 of that law provides:

'(1) "Family member" means:

...

(d) the dependent direct relatives in the ascending line of the Union citizen and the dependent direct relatives in the ascending line of the spouse or partner as defined in point (b).

(2) The Minister may authorise any other family members, irrespective of their nationality, not falling under the definition in paragraph 1, to reside in the territory, provided they satisfy one of the following conditions:

1. in the country from which they have come, they were dependants or members of the household of the Union citizen having the primary right of residence;
2. serious health grounds strictly require the personal care of the family member by the Union citizen.

The application for entry or residence of family members referred to in the preceding subparagraph shall be subject to an extensive examination of their personal circumstances.

...'

10 Under Article 103 of the Law on freedom of movement:

'Before taking a decision refusing residence, withdrawing or refusing to renew a residence permit or an expulsion decision regarding a third-country national, the Minister shall take account of considerations such as how long the individual concerned has resided in Luxembourg, his/her age, state of health, family and economic situation, social and cultural integration into the country and the extent of his/her links with the country of origin, except where his/her presence constitutes a threat to public policy or public security.

No expulsion decision, other than on imperative grounds of public security, may be taken in respect of a minor who is not accompanied by a legal representative, unless expulsion is in his/her best interests.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 11 The applicants in the main proceedings are all from Kosovo. In 1999, Mr Kreshnik Ymeraga arrived in Luxembourg at the age of 15 to live with his uncle, a Luxembourg national, who became his legal guardian. Although Mr Kreshnik Ymeraga's application for asylum was rejected by the Luxembourg authorities, his situation was regularised in 2001 and, thereafter, he went on to study and found regular employment.
- 12 Between 2006 and 2008, Mr and Mrs Ymeraga and Mr Kreshnik Ymeraga's two brothers arrived in turn in Luxembourg. They were all adults when they arrived, except for Mr Labinot Ymeraga, who was three weeks from attaining the age of majority. On the day they arrived, they all applied for international protection in accordance with the law on the right of asylum and complementary forms of protection.
- 13 Their application for international protection having been rejected by the Luxembourg authorities, Mr and Mrs Ymeraga and Mr Kreshnik Ymeraga's two brothers applied, on 8 May 2008, for residence authorisations on grounds of family reunification with Mr Kreshnik Ymeraga. That application was rejected by implication on 9 August 2008 and the refusal was confirmed by judgment of the Tribunal administratif (Administrative Court) of 9 March 2010, which was not appealed.
- 14 Meanwhile, on 16 March 2009, Mr Kreshnik Ymeraga acquired Luxembourg nationality. On 14 August 2009, Mr and Mrs Ymeraga applied to the Minister for a residence permit as family members of a citizen of the Union.
- 15 On 17 May 2010, Mr and Mrs Ymeraga renewed their application to the Minister of 14 August 2009 and also sought a residence permit or, in the alternative, a residence authorisation, for Mr Kreshnik Ymeraga's two brothers.
- 16 By three decisions of 12 July 2010, the Minister rejected those applications. The action for annulment those decisions was also dismissed by judgment of the Tribunal administratif of 6 July 2011.
- 17 According to that judgment, although Mr Kreshnik Ymeraga had made a financial contribution to the expenses of his family members who had remained in Kosovo, his parents could not be regarded as his 'dependants' for the purposes of the Law on freedom of movement. As regards his two brothers, since Mr Kreshnik Ymeraga had left Kosovo in 1999, it could not be claimed that they were 'members of the household' for the purposes of that law, despite the financial assistance established for the period from 19 March 2006 to 20 February 2007.
- 18 The tribunal administratif also rejected as unfounded the alleged breach of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, on the ground that the refusal to grant residence to Mr Kreshnik Ymeraga's parents and two brothers could not prevent them from continuing their family life with him as it had been after Mr Kreshnik Ymeraga had left Kosovo and before they arrived in Luxembourg.
- 19 The applicants in the main proceedings lodged an appeal against the judgment of the tribunal administratif before the referring court. The Minister's expulsion decisions are suspended, pending judgment in the substantive proceedings, except for the decision concerning Mr Labinot Ymeraga, which was implemented before the proceedings were stayed.
- 20 The Cour administrative (Administrative Court of Appeal) notes that, although the Law on freedom of movement is intended to transpose Directives 2003/86 and 2004/38, those directives do not seem to be applicable to Mr Kreshnik Ymeraga.

- 21 Thus, the referring court considers that the question which arises is whether, on the basis of Article 20 TFEU and, potentially, certain provisions of the Charter of Fundamental Rights of the European Union ('the Charter') a right to family reunification in Luxembourg may be conferred on the family members of Mr Kreshnik Ymeraga.
- 22 In those circumstances, the Cour administrative decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'To what extent does the fact of being a citizen of the Union and the related right to reside in the country of which a Union citizen is a national, as provided for by Article 20 of the TFEU, along with the rights, guarantees and obligations laid down in the Charter ... and in particular and insofar as is relevant, ... Articles 20, 21, 24, 33 and 34 [thereof], confer a right to family reunification upon a sponsor who is a citizen of the Union and wishes to bring about, in the country in which he resides and of which he holds the nationality, the reunification with himself of his mother and father and two of his brothers, all of whom are third-country nationals, where he has not exercised his right to freedom of movement and has not resided in a Member State other than that of which he holds the nationality?'

Consideration of the question referred for a preliminary ruling

- 23 By its question, the referring court seeks to determine, in essence, whether Article 20 TFEU must be interpreted as precluding a Member State from refusing to allow third-country nationals to reside in its territory, where such third-country nationals wish to reside with a family member who is a Union citizen, residing in the Member State of which he holds the nationality, and who has never exercised his right of freedom of movement as a Union citizen.

Directives 2003/86 and 2004/38

- 24 As a preliminary point, it should be noted that the applicants in the main proceedings do not qualify for the protection afforded by Directives 2003/86 and 2004/38.
- 25 First, in respect of Directive 2003/86, Article 1 provides that, its purpose is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.
- 26 However, in accordance with Article 3(3) of that directive, the directive does not apply to family members of a Union citizen.
- 27 Since, in the main proceedings, it is the Union citizen who resides in a Member State and his family members are third-country nationals who wish to reside in that Member State for the purpose of being reunited with that citizen, Directive 2003/86 is not applicable to the applicants in the main proceedings as regards the applications which are the subject of the main proceedings.
- 28 Second, the Court has already had occasion to point out that Directive 2004/38 aims to facilitate the exercise of the primary and individual right to move and reside freely within the territory of the Member States that is conferred directly on Union citizens by the FEU Treaty and that it aims in particular to strengthen that right (see Case C-256/11 *Dereci and Others* [2011] ECR I-11315, paragraph 50 and the case-law cited).
- 29 Article 3(1) of that directive provides that the directive is to apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 of the directive who accompany or join them.

- 30 The Court has already had occasion to state that a Union citizen who has never exercised his right of freedom of movement and has always resided in a Member State of which he is a national, is not covered by the concept of ‘beneficiary’ for the purposes of that provision, so that Directive 2004/38 is not applicable to him (Case C-434/09 *McCarthy* [2011] ECR I-3375, paragraphs 31 and 39, and *Dereci and Others*, paragraph 54).
- 31 Similarly, it has been held that, in so far as a Union citizen is not covered by the concept of ‘beneficiary’ for the purposes of Article 3(1) of Directive 2004/38, their family member is not covered by that concept either, given that the rights conferred by that directive on the family members of a beneficiary of that directive are not autonomous rights of those family members, but derived rights, acquired through their status as members of the beneficiary’s family (see *McCarthy*, paragraph 42, and *Dereci and Others*, paragraph 55).
- 32 In the case in the main proceedings, as the Union citizen concerned has never exercised his right of freedom of movement and has always resided, as a Union citizen, in the Member State of which he holds the nationality, it must be concluded that he is not covered by the concept of ‘beneficiary’ for the purposes of Article 3(1) of Directive 2004/38, so that that directive is applicable neither to him nor to his family members.
- 33 It follows that Directives 2003/86 and 2004/38 are not applicable to third-country nationals who apply for the right of residence in order to join a family member who is a Union citizen and has never exercised his right of freedom of movement as a Union citizen, always having resided as such in the Member State of which he holds the nationality (see, to that effect, *Dereci and Others*, paragraph 58).

Article 20 TFEU

- 34 As regards Article 20 TFEU, the Treaty provisions on citizenship of the Union do not confer any autonomous right on third-country nationals (Case C-40/11 *Iida* [2012] ECR, paragraph 66).
- 35 Any rights conferred on third-country nationals by the Treaty provisions on Union citizenship are not autonomous rights of those nationals but rights derived from the exercise of freedom of movement by a Union citizen. The purpose and justification of those derived rights are based on the fact that a refusal to allow them would be such as to interfere with the Union citizen’s freedom of movement by discouraging him from exercising his rights of entry into and residence in the host Member State (*Iida*, paragraphs 67 and 68).
- 36 In this respect, the Court has already held that there are very specific situations in which, despite the fact that the secondary law on the right of residence of third-country nationals does not apply and the Union citizen concerned has not made use of his freedom of movement, a right of residence cannot, exceptionally, without undermining the effectiveness of the Union citizenship that citizen enjoys, be refused to a third-country national who is a family member of his if, as a consequence of refusal, that citizen would be obliged in practice to leave the territory of the European Union altogether, thus denying him the genuine enjoyment of the substance of the rights conferred by virtue of his status (see *Dereci and Others*, paragraphs 64, 66 and 67, and *Iida*, paragraph 71).
- 37 The common element in the above situations is that, although they are governed by legislation which falls a priori within the competence of the Member States, namely legislation on the right of entry and stay of third-country nationals outside the scope of provisions of secondary legislation which, under certain conditions, provide for the attribution of such a right, they none the less have an intrinsic connection with the freedom of movement of a Union citizen, which prevents the right of entry and residence being refused to those nationals in the Member State of residence of that citizen, in order not to interfere with that freedom (see, to that effect, *Iida*, paragraph 72).

- 38 The Court has also found, in this respect, that the mere fact that it might appear desirable to a national of a Member State, for economic reasons or in order to keep his family together in the territory of the Union, for the members of his family who do not have the nationality of a Member State to be able to reside with him in the territory of the Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave Union territory if such a right is not granted (*Dereci and Others*, paragraph 68).
- 39 In the main proceedings, according to the referring court, the only factor which could justify a right of residence being conferred on the family members of the citizen concerned is Mr Kreshnik Ymeraga's intention to bring about, in the Member State in which he resides and of which he holds the nationality, reunification with those family members, which is not sufficient to support the view that a refusal to grant such a right of residence may have the effect of denying Mr Kreshnik Ymeraga the genuine enjoyment of the substance of the rights conferred by virtue of his status as citizen of the Union.
- 40 As to the fundamental rights mentioned by the referring court, it must be borne in mind that, in accordance with Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing European Union law. Under Article 51(2) thereof, the Charter does not extend the field of application of European Union law beyond the powers of the Union, and it does not establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties. Accordingly, the Court is called on to interpret, in the light of the Charter, the law of the European Union within the limits of the powers conferred on it (see *Dereci and Others*, paragraph 71, and *Iida*, paragraph 78).
- 41 To determine whether the Luxembourg authorities' refusal to grant Mr Kreshnik Ymeraga's family members a right of residence as family members of a Union citizen is a situation involving the implementation of European Union law within the meaning of Article 51 of the Charter, it must be ascertained among other things whether the national legislation at issue is intended to implement a provision of European Union law, what the character of that legislation is, and whether it pursues objectives other than those covered by European Union law, even if it is capable of indirectly affecting that law, and also whether there are specific rules of European Union law on the matter or capable of affecting it (see Case C-309/96 *Annibaldi* [1997] ECR I-7493, paragraphs 21 to 23, and *Iida*, paragraph 79).
- 42 While the Law on freedom of movement is indeed intended to implement European Union law, it is none the less the case that the situation of the applicants in the main proceedings is not governed by European Union law, since Mr Kreshnik Ymeraga cannot be regarded as a beneficiary of either Directive 2004/38 or, as regards the applications at issue in the main proceedings, Directive 2003/86, and the refusal to confer a right of residence on Mr Kreshnik Ymeraga's family members does not have the effect of denying him the genuine enjoyment of the substance of the rights conferred by virtue of his status as citizen of the Union.
- 43 In those circumstances, the Luxembourg authorities' refusal to grant Mr Kreshnik Ymeraga's family members a right of residence as family members of a Union citizen is not a situation involving the implementation of European Union law within the meaning of Article 51 of the Charter, so that its conformity with fundamental rights cannot be examined in the light of the rights established by the Charter.
- 44 Such a finding does not prejudice the question whether, on the basis of an examination in the light of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are parties, to the third-country nationals in the main proceedings may not be refused a right of residence.

- 45 In the light of the foregoing, the answer to the question referred is that Article 20 TFEU must be interpreted as not precluding a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national wishes to reside with a family member who is a European Union citizen residing in the Member State of which he holds the nationality and has never exercised his right of freedom of movement as a Union citizen, provided such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen.

Costs

- 46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 20 TFEU must be interpreted as not precluding a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national wishes to reside with a family member who is a European Union citizen residing in the Member State of which he holds the nationality and has never exercised his right of freedom of movement as a Union citizen, provided such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen.

[Signatures]