



Reports of Cases

Case C-87/12

Kreshnik Ymeraga and Others

v

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

(Request for a preliminary ruling from the Cour administrative)

(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)

Summary — Judgment of the Court (Second Chamber), 8 May 2013

1. *Citizenship of the Union — Right to move and reside freely on the territory of the Member States — Directive 2004/38 — Beneficiaries — Family members of a Union citizen who are third-country nationals — Condition — Union citizen who has exercised his right of freedom of movement — Application of Directive 2003/86 to family members of a Union citizen — Not included*

(European Parliament and Council Directive 2004/38, Arts 2(2) and 3(1); Council Directive 2003/86, Art. 3(3))

2. *Citizenship of the Union — Provisions of the Treaty — Scope — Union citizen who has never exercised his right of freedom of movement — Condition of inclusion — Application of measures which 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 — Criterion for appraisal — Measures having the effect of obliging the citizen to leave the territory of the European Union — Refusal of right of residence to members of his family who are third-country nationals — Insufficient circumstances to establish that denial*

(Arts 20 TFEU and 21 TFEU)

3. *Fundamental rights — Charter of Fundamental Rights of the European Union — Respect for private and family life — Refusal of right of residence to family members of a Union citizen who are nationals of third countries — Situation not coming within the field of application of European Union law — Assessment with regard to the European Convention for the Protection of Human Rights — Responsibility for assessment lies with the national court*

(Charter of Fundamental Rights of the European Union, Art. 51(1))

1. Directive 2003/86 on the right to family reunification and Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States 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 para. 33)

2. 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.

In this respect, 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.

(see paras 38, 45, operative part)

3. Where the situation of family members of a Union citizen who are third-country nationals is governed neither by Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States nor by Directive 2003/86 on the right to family reunification, and the refusal by a Member State to confer a right of residence on family members of a Union citizen 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, such a refusal does not fall within the scope of the implementation of EU law within the meaning of Article 51 of the Charter of Fundamental Rights of the European Union, so that its conformity with fundamental rights cannot be examined in the light of the rights established by the Charter.

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, the third-country nationals in the main proceedings may not be refused a right of residence.

(see paras 42-44)