— *it is immaterial that the relationship of dependency relied on by a third-country national in support of his application for residence for the purposes of family reunification comes into being after the imposition on him of an entry ban;*

— *it is immaterial that the entry ban imposed on the third-country national has become final at the time when he submits his application for residence for the purposes of family reunification; and*

— *it is immaterial that an entry ban, imposed on a third-country national who has submitted an application for residence for the purposes of family reunification, may be justified by non-compliance with an obligation to return; where such a ban is justified on public policy grounds, such grounds may permit a refusal to grant that third-country national a derived right of residence under Article 20 TFEU only if it is apparent from a specific assessment of all the circumstances of the individual case, in the light of the principle of proportionality, the best interests of any child or children concerned and fundamental rights, that the person concerned represents a genuine, present, and sufficiently serious threat to public policy.*

3. *Article 5 of Directive 2008/115 must be interpreted as precluding a national practice pursuant to which a return decision is adopted with respect to a third-country national, who has previously been the subject of a return decision, accompanied by an entry ban that remains in force, without any account being taken of the details of his or her family life, and in particular the interests of a minor child of that third-country national, referred to in an application for residence for the purposes of family reunification submitted after the adoption of such an entry ban, unless such details could have been provided earlier by the person concerned.*

([1]) OJ C 145, 25.4.2016.

Judgment of the Court (Grand Chamber) of 2 May 2018 (requests for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Middelburg, Raad voor Vreemdelingenbetwistingen — Netherlands, Belgium) — K. v Staatssecretaris van Veiligheid en Justitie (C-331/16), H.F v Belgische Staat (C-366/16).

(Joined Cases C-331/16 and C-366/16) ([1])

(Reference for a preliminary ruling — Citizenship of the European Union — Right to move and reside freely within the territory of the Member States — Directive 2004/38/EC — Second subparagraph of Article 27(2) — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Expulsion on grounds of public policy or public security — Conduct representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society — Person whose asylum application has been refused for reasons within the scope of Article 1F of the Geneva Convention or Article 12(2) of Directive 2011/95/EU — Article 28(1) — Article 28(3)(a) — Protection against expulsion — Residence in the host Member State for the previous ten years — Imperative grounds of public security — Meaning)

(2018/C 231/04)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Middelburg, Raad voor Vreemdelingenbetwistingen

Parties to the main proceedings

Applicants: K. (C-331/16), H.F. (C-366/16)

Defendants: Staatssecretaris van Veiligheid en Justitie (C-331/16), Belgische Staat (C-366/16).

Operative part of the judgment

1. *Article 27(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, must be interpreted as meaning that the fact that a European Union citizen or a third-country national family member of such a citizen, who applies for a right of residence in the territory of a Member State, has been the subject, in the past, of a decision excluding him from refugee status under Article 1F of the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 and supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, or Article 12(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, does not enable the competent authorities of that Member State to consider automatically that the mere presence of that individual in its territory constitutes, whether or not there is any risk of re-offending, a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, capable of justifying the adoption of measures on grounds of public policy or public security.*

   The finding that there is such a threat must be based on an assessment, by the competent authorities of the host Member State, of the personal conduct of the individual concerned, taking into consideration the findings of fact in the decision to exclude that individual from refugee status and the factors on which that decision is based, particularly the nature and gravity of the crimes or acts that he is alleged to have committed, the degree of his individual involvement in them, whether there are any grounds for excluding criminal liability, and whether or not he has been convicted. That overall assessment must also take account of the time that has elapsed since the date when the crimes or acts were allegedly committed and the subsequent conduct of that individual, particularly in relation to whether that conduct reveals the persistence in him of a disposition hostile to the fundamental values enshrined in Articles 2 and 3 TEU, capable of disturbing the peace of mind and physical security of the population. The mere fact that the past conduct of that individual took place in a specific historical and social context in his country of origin, which is not liable to recur in the host Member State, does not preclude such a finding.

   In accordance with the principle of proportionality, the competent authorities of the host Member State must, in addition, weigh the protection of the fundamental interest of society at issue, on the one hand, against the interests of the person concerned in the exercise of his right to freedom of movement and residence as a Union citizen and in his right to respect for private and family life.

2. *Article 28(1) of Directive 2004/38 must be interpreted as meaning that, where the measures envisaged entail the expulsion of the individual concerned from the host Member State, that State must take account of, inter alia, the nature and gravity of the alleged conduct of the individual concerned, the duration and, when appropriate, the legality of his residence in that Member State, the period of time that has elapsed since that conduct, the individual's behaviour during that period, the extent to which he currently poses a danger to society, and the solidity of social, cultural and family links with that Member State.*

   Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that it is not applicable to a European Union citizen who does not have a right of permanent residence in the host Member State, within the meaning of Article 16 and Article 28(2) of that directive.

(1) OJ C 326, 5.9.2016.
OJ C 343, 19.9.2016.