



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

27 February 2020*

(Reference for a preliminary ruling — Article 20 TFEU — European Union citizens — Union citizen who has never exercised the freedom of movement — Application for a temporary residence permit for the spouse, who is a third-country national — Rejection — Obligation to support the spouse — Union citizen having insufficient resources — Obligation of the spouses to live together — National legislation and practice — Effective enjoyment of the substance of the rights conferred on Union citizens — Deprived)

In Case C-836/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castilla-La Mancha, Spain), made by decision of 30 November 2018, received at the Court on 28 December 2018, in the proceedings

Subdelegación del Gobierno en Ciudad Real

v

RH,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis, E. Juhász, M. Ilešič and C. Lycourgos (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- RH, by P. García Valdivieso Manrique and A. Ceballos Cabrillo, abogados,
- the Spanish Government, by S. Jiménez García, acting as Agent,
- the Danish Government, by J. Nymann-Lindegren, M. Wolff and P. Ngo, acting as Agents,
- the German Government, by J. Möller and R. Kanitz, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and J. Hoogveld, acting as Agents,

* Language of the case: Spanish.

– the European Commission, by I. Martínez del Peral and E. Montaguti, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 21 November 2019,
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 the context of a dispute between the Subdelegación del Gobierno en Ciudad Real (Governmental Subdelegation in Ciudad Real, Spain; ‘the subdelegation’) and RH concerning the rejection by the subdelegation of RH’s application for a residence permit as a family member of a Union citizen.

Legal context

European Union law

- 3 Article 3(1) 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, OJ 2005 L 30, p. 27, and OJ 2005 L 197, p. 34) provides:

‘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.’

- 4 Article 7(1) and (2) of that directive provides:

‘1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

...

- (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or

...

- (d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).’

Spanish law

5 Article 32 of the Constitution provides as follows:

‘1. Men and women shall have the right to marry in full legal equality.

2. Forms of marriage, the age and capacity to marry, the rights and duties of the spouses, the causes of separation and dissolution and their effects shall be regulated by law.’

6 Article 68 of the Código Civil (Civil Code) provides:

‘Spouses shall be obliged to live together and shall owe each other loyalty and mutual assistance. In addition, they must share domestic responsibilities and care for ascendants and descendants and their other dependants.’

7 Article 70 of that code provides:

‘The spouses shall determine by mutual agreement the place of the matrimonial home and, in the event of disagreement, the matter shall be decided by the court, taking into account the interests of the family.’

8 In the version applicable to the main proceedings, Article 1 of Real Decreto 240/2007, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo (Royal Decree 240/2007 on the entry, free movement and residence in Spain of citizens of Member States of the European Union and of other States parties to the Agreement on the European Economic Area), of 16 February 2007, provides:

‘1. This Royal Decree shall govern the conditions for the exercise of the rights of entry and exit, free movement, stay, residence and work in Spain for nationals of other Member States of the European Union and other States parties to the Agreement on the European Economic Area, as well as the limits imposed on those rights for reasons of public policy, public safety or public health.

2. The provisions of this Royal Decree shall be without prejudice to those of special laws and international treaties to which [the Kingdom of Spain] is party.’

9 Article 2 of that Royal Decree provides:

‘This Royal Decree also applies, in accordance with its provisions, to the following family members of a national of another Member State of the European Union or another State party to the Agreement on the European Economic Area, regardless of their nationality, where they are accompanying or joining that national:

(a) the spouse, provided that there has been no agreement or order for the annulment of the marriage, divorce or legal separation.

...’

10 Under Article 7 of that Royal Decree:

‘1. All Union citizens and nationals of other States parties to the Agreement on the European Economic Area have the right to reside within Spanish national territory for a period of more than three months:

...

(b) if they have sufficient resources for themselves and their family members not to become a burden on the Spanish social assistance system during their period of residence and has comprehensive sickness insurance cover in Spain; or

...

(d) if they are family members accompanying or joining a Union citizen or a citizen of another State party to the Agreement on the European Economic Area who satisfies the conditions set out in points (a), (b) or (c).

2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State accompanying or joining the citizen of the Union or of another State party to the Agreement on the European Economic Area in Spain, provided that that citizen satisfies the conditions set out in paragraph 1(a), (b) or (c).

...

7. As to sufficient means of subsistence, no fixed amount can be established; regard shall be had to the personal situation of the nationals of a Member State of the European Union or of another State party to the Agreement on the European Economic Area. In any event, the amount shall not exceed the level of financial resources below which Spanish nationals receive social assistance or the amount of the minimum social security pension.’

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

11 On 13 November 2015, RH, a Moroccan national of full age, married, in Ciudad Real (Spain), a Spanish national of full age who had never exercised the freedom of movement within the European Union. The legality of that marriage has never been called into question. Since then, the spouses have been living together in Ciudad Real with the father of the Spanish national.

12 On 23 November 2015, RH submitted an application for a temporary residence card as a family member of a Union citizen.

13 On 20 January 2016, that request was rejected by the competent administrative authority on the grounds that RH’s wife had not established that she met the conditions laid down in Article 7 of Royal Decree 240/2007. In particular, it was held that the wife of RH had not shown that she had sufficient financial resources to support her husband, whereas, under Article 7 thereof, the obligation to have such resources was incumbent exclusively on her.

14 It is apparent from the order for reference that the competent administrative authority did not examine any other circumstances capable of affecting the actual relationship between the spouses, nor did it analyse the repercussions which the fact that her husband is required to leave the territory of the European Union would have on the Spanish national. Nor did that authority take into account the fact

that the father of the Spanish national undertook to cover the costs resulting from RH's stay in Spain, the offer and proof of the financial resources of the father of RH's wife having, moreover, been established.

- 15 On 10 March 2016, the subdelegation confirmed the rejection of the application made by RH. RH brought an administrative appeal against that decision before the Juzgado de lo Contencioso Administrativo No 2 de Ciudad Real (Administrative Court No 2 of Ciudad Real, Spain).
- 16 That court upheld his action, holding that Article 7 of Royal Decree 240/2007 was not applicable to RH, a family member of a Spanish national who has not exercised the freedom of movement.
- 17 The State administration appealed against that decision to the referring court.
- 18 The referring court points out that the Tribunal Supremo (Supreme Court, Spain) ruled, in a judgment of 1 June 2010, that Royal Decree 240/2007 applies to Spanish nationals whether or not they have exercised their the freedom of movement within the territory of the European Union and to their family members who are third-country nationals.
- 19 However, the referring court considers that the Tribunal Supremo (Supreme Court) did not correctly assess that it follows from Article 3 of Directive 2004/38 and from the case-law of the Court that that directive applies only to nationals of a Member State moving within the territory of another Member State. Furthermore, it points out that it follows from the case-law of the Tribunal Supremo (Supreme Court) that the regime for family reunification of third-country nationals who are members of the family of a Spanish national, as provided for in Royal Decree 240/2007, is now the same as that for a Union citizen who has settled in Spain.
- 20 According to the referring court, at the date on which the judgment of the Tribunal Supremo (Supreme Court) was delivered, Royal Decree 240/2007 had not incorporated the conditions laid down in Article 7 of Directive 2004/38 and, in particular, the condition requiring Union citizens to have sufficient financial resources for themselves and their family members not to become a burden on the social assistance system.
- 21 By a law of 20 April 2012, Article 7 of Directive 2004/38 was finally transposed, in its entirety, into Spanish law, including the obligation to have health insurance and to possess sufficient financial resources. Those conditions therefore also became applicable to a Spanish national who had never exercised the freedom of movement and wished his or her family members, being third-country nationals, to join him or her. The application of the conditions of Article 7 of Royal Decree 240/2007, as amended by the Law of 20 April 2012, to Spanish nationals who have not exercised the freedom of movement has been considered, by the subsequent case-law of the Tribunal Supremo (Supreme Court), to be the effect of a provision of domestic law, independent of Directive 2004/38.
- 22 That being so, the referring court asks whether Article 20 TFEU does not preclude the Spanish practice which requires a Spanish national who has never exercised the freedom of movement within the European Union to prove that he or she has sufficient financial resources for him or herself and his or her spouse not to become a burden on the social assistance system. More particularly, it points out that this automatic practice of the Spanish State, without any possibility of adaptation to particular situations, could be contrary to Article 20 if it were to result in the Spanish national having to leave the territory of the European Union.
- 23 The referring court considers that that could be the case, having regard to the Spanish legislation applicable to the marriage. Indeed, it points out that the right to live together derives from the *de minimis* content of Article 32 of the Constitution. In addition, Articles 68 and 70 of the Civil Code

provide that spouses are obliged to live together and establish, by mutual agreement, the place of the marital home. It follows therefrom that the obligation for spouses to live together, under Spanish law, is distinct from a mere decision of expediency or convenience.

- 24 According to the national court, it might not be possible to comply with that obligation if the legal residence of the third-country national, the spouse of the Spanish national, were to depend on economic criteria. Refusing to grant a right of residence to the spouse would make it necessary for a Spanish national who does not have the means of subsistence required under Article 7 of Royal Decree 240/2007 to leave the territory of the European Union, since that would be the only way of complying with and giving effect to the right and obligation to live together laid down by Spanish law. In order to reach such a conclusion, it is not necessary for it to be legally possible to compel the spouses to live together.
- 25 Furthermore, the national court considers that, in any event, Article 20 TFEU is infringed by the Spanish State's practice of automatically refusing family reunification to a third-country national with a Spanish national who has never exercised the freedom of movement, on the sole ground that that Spanish national does not have a certain standard of living, without the authorities having examined whether there is a relationship of dependency between the Union citizen and that third-country national of such a kind that, if the latter were refused a derived right of residence, the Union citizen would in fact be obliged to leave the territory of the European Union as a whole.
- 26 The referring court considers that the Spanish authorities rejected RH's application solely on the ground that his wife did not have sufficient resources, without examining the particular circumstances of the marriage in question. In that regard, that court rejects the administration's allegations criticising the fact that RH's wife failed to mention the existence of possible special circumstances. According to the referring court, the Spanish State did not give the wife of RH the opportunity to make any observations on the possible existence of a dependent relationship between her and her husband. The authorities did not even examine the evidence that the father of RH's wife has sufficient means of subsistence, despite the fact that he expressly offered to be responsible for the maintenance of his daughter's spouse, thereby proving that, in practice, the Spanish State relies exclusively and automatically on the insufficiency of the Spanish national's own means of subsistence to refuse to grant a third-country national a residence permit as a family member of an EU citizen.
- 27 In those circumstances the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice, Castilla-La Mancha) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) In the light of the requirement laid down in Article 68 of the Civil Code for spouses to live together, is the requirement that a Spanish citizen who has not exercised his or her right of free movement must satisfy the conditions laid down in Article 7(1) of Royal Decree 240/2007, as a necessary condition for the grant of a right of residence to his or her third-country spouse under Article 7(2) of that Royal Decree, liable, in the event that those conditions are not satisfied, to constitute an infringement of Article 20 [TFEU] if, as a result of the refusal to grant that right, the Spanish citizen is compelled to leave the territory of the European Union as a whole?
- (2) In any event, notwithstanding the foregoing and the answer given to the first question, in the light of the case-law of the Court of Justice of the European Union, including, in particular, the [judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C-82/16, EU:C:2018:308)], does the practice of the Spanish State of automatically applying the rule laid down in Article 7 of Royal Decree 240/2007, and refusing to grant a residence permit to a family member of a Union citizen where that Union citizen has never exercised the freedom of movement, solely and exclusively on the ground that the Union citizen does not satisfy the conditions laid down in that provision, without having examined specifically and individually whether there exists a relationship of dependency between that Union citizen and the

third-country national of such a nature that, for any reason and in the light of the circumstances, it would mean that were the third-country national refused a right of residence, the Union citizen could not be separated from the family member on which he or she is dependent and would have to leave the territory of the European Union, infringe Article 20 TFEU in the terms set out above?’

Consideration of the questions referred

Preliminary observations

- 28 First of all, it is necessary to state that it is apparent from the order for reference that the competent Spanish authorities refused, on the basis of Article 7 of Royal Decree 240/2007, which transposes Article 7 of Directive 2004/38, to grant RH, a Moroccan national, a residence permit as a family member of a Union citizen, on the ground that his wife, a Union citizen, did not have sufficient resources for herself and the members of her family not to become a burden on the national social assistance system, without taking into account the fact that her father had declared his willingness to provide for RH.
- 29 The national court further states that RH’s wife is a Spanish national who has never exercised the freedom of movement within the European Union. It must be noted that, in such a situation, her spouse, who is a third-country national, cannot derive a right of residence either from Directive 2004/38 or from Article 21 TFEU (see, to that effect, judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 40 and the case-law cited).
- 30 Nevertheless, it follows from the order for reference that Article 7 of Royal Decree 240/2007 applies not only to applications for family reunification submitted by a third-country national who is a family member of a Union citizen who has exercised the freedom of movement, which fall within the scope of Directive 2004/38, but also, by virtue of the settled case-law of the Tribunal Supremo (Supreme Court), to applications for family reunification submitted by a third-country national who is a family member of a Spanish national who has never exercised the freedom of movement.
- 31 In those circumstances, it appears to be useful to recall that, in accordance with the settled case-law of the court and as the Advocate General noted in point 41 of his Opinion, the requirement concerning the sufficiency of resources, set out in Article 7 of Directive 2004/38, must be interpreted as meaning that, although the Union citizen must have sufficient resources, there is not the slightest requirement under EU law concerning their source, since they may be provided, in particular, by a member of that citizen’s family (see, to that effect, judgments of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraphs 30 to 33, and of 2 October 2019, *Bajratari*, C-93/18, EU:C:2019:809, paragraph 30 and the case-law cited).

The second question

- 32 By its second question, which must be examined first, the referring court asks, in essence, whether Article 20 TFEU must be interpreted as precluding a Member State from rejecting an application for family reunification submitted by the spouse, who is a national of a non-member country, of a Union citizen who is a national of that Member State and who has never exercised the freedom of movement, on the sole ground that that Union citizen does not have, for him or herself and his or her spouse, sufficient resources not to become a burden on the national social assistance system, without it having been examined whether there is a relationship of dependency between that Union citizen and his or her spouse of such a kind that, if the spouse is refused a derived right of residence, that Union citizen would be obliged to leave the territory of the European Union as a whole and would thus be deprived of the effective enjoyment of the substance of the rights conferred by virtue of his or her status.

- 33 First, it is appropriate to point out that EU law does not, in principle, apply to an application for family reunification of a third-country national with a member of his or her family who is a national of a Member State and has never exercised the freedom of movement and that, accordingly, it does not, in principle, preclude legislation of a Member State under which such family reunification is subject to a condition of sufficient resources such as that described in the preceding paragraph.
- 34 It is, however, appropriate to note, second, that the systematic imposition, without any exception, of such a condition is liable to fail to have regard to the derived right of residence which must be recognised, in very specific situations, under Article 20 TFEU, as being held by a third-country national who is a family member of a Union citizen.
- 35 In that regard, it must be borne in mind that, in accordance with the settled case-law, Article 20 TFEU confers on every individual who is a national of a Member State citizenship of the Union, which is intended to be the fundamental status of nationals of the Member States (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 47 and the case-law cited).
- 36 Citizenship of the Union confers on each Union citizen a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and restrictions laid down by the Treaty and the measures adopted for their implementation (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 48 and the case-law cited).
- 37 In that context, the Court has held that Article 20 TFEU precludes national measures, including decisions refusing a right of residence to the family members of a Union citizen, which have the effect of depriving Union citizens of the genuine enjoyment of the substance of the rights conferred by virtue of their status (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 49 and the case-law cited).
- 38 On the other hand, the Treaty provisions on citizenship of the Union do not confer any autonomous right on third-country nationals. Any rights conferred on third-country nationals are not autonomous rights of those nationals but rights derived from those enjoyed 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, in particular, with freedom of movement of a Union citizen (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 50 and the case-law cited).
- 39 In that regard, the Court has previously held that there are very specific situations in which, despite the fact that secondary law on the right of residence of third-country nationals does not apply and the Union citizen concerned has not made use of freedom of movement, a right of residence must nevertheless be granted to a third-country national who is a family member of that Union citizen, since the effectiveness of Union citizenship would otherwise be undermined if, as a consequence of refusal of such a right, that citizen would be obliged in practice to leave the territory of the European Union as a whole, thus depriving him or her of the genuine enjoyment of the substance of the rights conferred by that status (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 51).
- 40 However, a refusal to grant a right of residence to a third-country national is liable to undermine the effectiveness of Union citizenship only if there exists, between that third-country national and the Union citizen who is a family member, a relationship of dependency of such a nature that it would lead to the Union citizen being compelled to accompany the third-country national concerned and to leave the territory of the European Union as a whole (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 52 and the case-law cited).

- 41 It follows that a third-country national may claim a derived right of residence under Article 20 TFEU only if, in the absence of the grant of such a right of residence, both the third-country national and the Union citizen, as a family member, would be obliged to leave the territory of the European Union. Accordingly, the grant of such a derived right of residence may be possible only where a third-country national who is a family member of a Union citizen does not satisfy the requirements for obtaining, on the basis of other provisions and, in particular, under the national legislation applicable to family reunification, a right of residence in the Member State of which that citizen is a national.
- 42 However, once it has been established that no right of residence, under national law or secondary EU law, may be granted to a third-country national who is a family member of a Union citizen, the consequence of the fact that there is, between that third-country national and that Union citizen, a relationship of dependency such as would result in that Union citizen being obliged to leave the territory of the European Union as a whole, in the event of removal of his or her family member, who is a third-country national, from that territory, is that, in principle, Article 20 TFEU requires the Member State concerned to recognise that that third-country national has a derived right of residence.
- 43 However, it should also be noted, third, that the Court has previously accepted that the derived right of residence under Article 20 TFEU is not absolute, since Member States may refuse to grant it in certain specific circumstances.
- 44 Thus, the Court has previously ruled that Article 20 TFEU does not affect the possibility of Member States relying on an exception linked, in particular, to upholding the requirements of public policy and safeguarding public security (judgments of 13 September 2016, *CS, C-304/14*, EU:C:2016:674, paragraph 36, and of 13 September 2016, *Rendón Marín, C-165/14*, EU:C:2016:675, paragraph 81).
- 45 A refusal of a right of residence founded on the existence of a genuine, present and sufficiently serious threat to the requirements of public policy or of public security, in view of, inter alia, criminal offences committed by a third-country national, is accordingly compatible with EU law even if its effect is that the Union citizen who is a family member of that third-country national is compelled to leave the territory of the European Union (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 92 and the case-law cited).
- 46 It must therefore be examined whether Article 20 TFEU similarly allows Member States to introduce an exception to the derived right of residence enshrined in that article which is linked to a requirement that the Union citizen have sufficient resources.
- 47 In that regard, it must be pointed out that the assessment of an exception to a derived right of residence flowing from Article 20 TFEU must take account of the right to respect for private and family life, as laid down in Article 7 of the Charter of Fundamental Rights of the European Union (judgments of 13 September 2016, *CS, C-304/14*, EU:C:2016:674, paragraph 36, and of 13 September 2016, *Rendón Marín, C-165/14*, EU:C:2016:675, paragraph 81) and, more generally, of the principle of proportionality as a general principle of EU law.
- 48 To refuse a third-country national who is a family member of a Union citizen a derived right of residence in the territory of the Member State of which that citizen is a national on the sole ground that the latter does not have sufficient resources, even though there is, between that citizen and that third-country national, a relationship of dependency as described in paragraph 39 of this judgment, would constitute an impairment of the effective enjoyment of the essential rights deriving from the status of Union citizen which would be disproportionate in relation to the objective pursued by such a means test, namely to preserve the public finances of the Member State concerned. Such a purely economic objective is fundamentally different from that of maintaining public order and safeguarding public security and does not justify such serious interference with the effective enjoyment of the substance of the rights deriving from Union citizenship.

- 49 It follows that, where there is a relationship of dependency, within the meaning of paragraph 39 of this judgment, between a Union citizen and a third-country national who is a member of his or her family, Article 20 TFEU precludes a Member State from providing for an exception to the derived right of residence which that third-country national has under that article, on the sole ground that that Union citizen does not have sufficient resources.
- 50 Accordingly, as, in essence, the Advocate General noted in point 66 of his Opinion, the obligation imposed on a Union citizen to have sufficient resources for him or herself and his or her family member who is a third-country national, is such as to undermine the effectiveness of Article 20 TFEU if it results in that citizen having to leave the territory of the European Union as a whole and, by reason of the existence of a relationship of dependency between that national and the Union citizen, the latter is, in fact, obliged to accompany him or her and, consequently, also to leave the territory of the European Union.
- 51 As regards, fourth, the procedural arrangements under which, in the context of an application for residence for the purposes of family reunification, a third-country national may rely on the existence of a derived right under Article 20 TFEU, the Court held that, while it is indeed for the Member States to determine the detailed rules on how to give effect to the derived right of residence which a third-country national must, in the very specific situations referred to in paragraph 39 of this judgment, be granted under Article 20 TFEU, the fact remains that those procedural arrangements cannot, however, compromise the effectiveness of Article 20 (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 54).
- 52 Thus, although the national authorities are not obliged to examine systematically and on their own initiative the existence of a relationship of dependency within the meaning of Article 20 TFEU, the person concerned having to provide the evidence enabling them to assess whether the conditions for the application of Article 20 TFEU are satisfied, the effectiveness of that article would, nonetheless, be jeopardised if the third-country national or the Union citizen, as a member of his or her family, were prevented from relying on the factors which make it possible to assess whether a relationship of dependency, within the meaning of Article 20 TFEU, exists between them (see, by analogy, judgment of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraphs 75 and 76).
- 53 Accordingly, where the competent national authority receives an application from a third-country national for the grant of a right of residence for the purpose of family reunification with a Union citizen who is a national of the Member State concerned, that authority cannot automatically reject that application on the sole ground that the Union citizen does not have sufficient resources. On the contrary, it is for that authority to assess, on the basis of the evidence which the third-country national and the Union citizen concerned must be free to provide and, if necessary, by carrying out the necessary investigations, whether there is a relationship of dependency between those two persons as described in paragraph 39 of this judgment, such that a derived right of residence must, in principle, be granted to that national under Article 20 TFEU (see, to that effect, judgment of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraphs 75 to 77).
- 54 In the light of the foregoing considerations, the answer to the second question must be that Article 20 TFEU must be interpreted as precluding a Member State from rejecting an application for family reunification submitted by the spouse, who is a national of a non-member country, of a Union citizen who holds the nationality of that Member State and who has never exercised the freedom of movement, on the sole ground that that Union citizen does not have, for him or herself and his or her spouse, sufficient resources not to become a burden on the national social assistance system, without it having been examined whether there is a relationship of dependency between that Union citizen and his or her spouse of such a kind that, if the latter were refused a derived right of residence, that Union citizen would be obliged to leave the territory of the European Union as a whole and would thus be deprived of the effective enjoyment of the substance of the rights conferred by his or her status.

The first question

- 55 By its first question, the referring court asks, in essence, whether Article 20 TFEU is to be interpreted as meaning that a relationship of dependency, such as would justify the grant of a derived right of residence under that article, exists on the sole ground that a national of a Member State, who is of full age and has never exercised the freedom of movement, and his or her spouse, who is of full age and a third-country national, are required to live together, by virtue of the obligations arising out of marriage under the law of the Member State of which the Union citizen is a national.
- 56 It must be recalled, first of all, that, unlike minors, particularly if they are infants, an adult is, in principle, able to lead a life independent of the members of his or her family. It follows that the identification of a relationship between two adult members of the same family as a relationship of dependency, capable of giving rise to a derived right of residence under Article 20 TFEU, is conceivable only in exceptional cases, where, having regard to all the relevant circumstances, there could be no form of separation of the individual concerned from the member of his or her family on whom he or she is dependent (see, to that effect, judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 65).
- 57 Second, it follows from the case-law of the Court 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 or her family together in EU territory, for the members of his or her family who do not have the nationality of a Member State to be able to reside with him or her in EU territory is not sufficient in itself to support the view that the Union citizen will be forced to leave the European Union if such a right is not granted (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 74 and the case-law cited).
- 58 Accordingly, the existence of a family link, whether natural or legal, between the Union citizen and his or her third-country national family member cannot be sufficient ground to justify the grant, under Article 20 TFEU, of a derived right of residence to that family member in the territory of the Member State of which the Union citizen is a national (see, to that effect, judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 75).
- 59 Third, the Court has also found that a principle of international law, restated in Article 3 of Protocol No 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, which EU law cannot be regarded as infringing in relations between the Member States, precludes a Member State from refusing its own nationals the right to enter its territory and to reside there on any ground whatsoever.
- 60 Since it is thus recognised that nationals of a Member State enjoy an unconditional right of residence in the territory of that State (judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 37), a Member State cannot lawfully require one of its nationals to leave its territory, in order, in particular, to comply with the obligations arising out of his or her marriage, without infringing the principle of international law referred to in the preceding paragraph of this judgment.
- 61 Accordingly, even supposing, as the referring court states regarding Spanish law, that the rules of a Member State relating to marriage require a national of that Member State and his or her spouse to live together, nonetheless, such an obligation could never legally compel that national to leave the territory of the European Union, even if his or her spouse, who is a third country national, were not granted a residence permit in the territory of that Member State. Having regard to the foregoing, such a legal obligation on the spouses to live together is not in itself sufficient to establish that there is a relationship of dependency such as to require the Union citizen, in the event of removal of his or her spouse from the territory of the European Union, to accompany him or her and, consequently, also to leave the territory of the European Union.

- 62 In any event, it is clear from the order for reference that the obligation imposed on the spouses to live together under Spanish law is not enforceable by judicial means.
- 63 In the light of the foregoing considerations, the answer to the first question must be that Article 20 TFEU must be interpreted as meaning that a relationship of dependency, such as to justify the grant of a derived right of residence under that article, does not exist on the sole ground that the national of a Member State, who is of full age and has never exercised the freedom of movement, and his or her spouse, who is of full age and a third-country national, are required to live together, by virtue of the obligations arising out of the marriage under the law of the Member State of which the Union citizen is a national.

Costs

- 64 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 (Fifth Chamber) hereby rules:

- 1. Article 20 TFEU must be interpreted as precluding a Member State from rejecting an application for family reunification submitted by the spouse, who is a third-country national, of a Union citizen who holds the nationality of that Member State and who has never exercised the freedom of movement, on the sole ground that that Union citizen does not have, for him or herself and his or her spouse, sufficient resources not to become a burden on the national social assistance system, without it having been examined whether there is a relationship of dependency between that Union citizen and his or her spouse of such a kind that, if the latter were refused a derived right of residence, that Union citizen would be obliged to leave the territory of the European Union as a whole and would thus be deprived of the effective enjoyment of the substance of the rights conferred by his or her status.**
- 2. Article 20 TFEU must be interpreted as meaning that a relationship of dependency, such as to justify the grant of a derived right of residence under that article, does not exist on the sole ground that the national of a Member State, who is of full age and has never exercised the freedom of movement, and his or her spouse, who is of full age and a third-country national, are required to live together, by virtue of the obligations arising out of the marriage under the law of the Member State of which the Union citizen is a national.**

[Signatures]