Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

25 April 2024*

(References for a preliminary ruling – Citizenship of the European Union – Article 20 TFEU – Union citizen who has never exercised his or her right of freedom of movement – Residence of a family member of that Union citizen – Threat to national security – Statement by a specialist national authority – Statement of reasons – Access to the file)

In Joined Cases C-420/22 and C-528/22,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Szegedi Törvényszék (Szeged High Court, Hungary), made by decisions of 16 June and 8 August 2022, received at the Court on 24 June and 8 August 2022, respectively, in the proceedings

NW (C-420/22),

PQ (C-528/22)

v

Országos Idegenrendészeti Főigazgatóság,

Miniszterelnöki Kabinetirodát vezető miniszter,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: J. Richard de la Tour,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 5 July 2023,

after considering the observations submitted on behalf of:

– NW, by B. Pohárnok, ügyvéd,

– PQ, by A. Németh and B. Pohárnok, ügyvédek,

* Language of the case: Hungarian.

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the French Government, by R. Bénard, A. Daniel and J. Illouz, acting as Agents,

– the European Commission, by A. Katsimerou, E. Montaguti and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 November 2023,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 20 TFEU, Article 9(3) and Article 10(1) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), and Articles 7 and 24, Article 51(1), and Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in proceedings between two third-country nationals, NW and PQ, on the one hand, and the Országos Idegenrendészeti Főigazgatóság (National Directorate-General for the Immigration Police, Hungary) ('the Directorate for the Immigration Police') and the Miniszterelnöki Kabinetirodát vezető miniszter (Minister responsible for managing the Prime Minister's Office, Hungary), on the other, concerning decisions to withdraw NW's permanent residence card and order him to leave Hungary and to reject PQ's application for a national settlement permit, respectively.

Legal context

European Union law

3 Article 4(1) of Directive 2003/109 provides:

'Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.'

4 Under Article 5 of that directive:

'1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

(a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;

(b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.'

5 Article 7(1) of Directive 2003/109 provides:

'To acquire long-term resident status, the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he/she resides. The application shall be accompanied by documentary evidence to be determined by national law that he/she meets the conditions set out in Articles 4 and 5 as well as, if required, by a valid travel document or its certified copy.

The evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation.'

6 Article 9(3) of that directive states:

'Member States may provide that the long-term resident shall no longer be entitled to maintain his/her long-term resident status in cases where he/she constitutes a threat to public policy, in consideration of the seriousness of the offences he/she committed, but such threat is not a reason for expulsion …'

7 Article 10(1) of Directive 2003/109 is worded as follows:

'Reasons shall be given for any decision rejecting an application for long-term resident status or withdrawing that status. Any such decision shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the redress procedures available and the time within which he/she may act.'

8 Article 13 of that directive states:

'Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter III of this Directive.'

Hungarian law

9 Paragraph 94(2) to (5) of a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény (Law No I of 2007 on the entry and residence of persons having the right of free movement and residence) of 5 January 2007 (*Magyar Közlöny* 2007/1.) states:

'2. Any third-country national holding a valid residence card or permanent residence card … issued to him or her as a family member of a Hungarian citizen … shall be issued, upon request made before the expiry of the residence card or permanent residence card, a national settlement permit … except if:

…

(c) a ground for exclusion provided for in subparagraphs 1(c) and 2 of Paragraph 33 of [a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény (Law No II of 2007 on the entry and residence of third-country nationals) of 5 January 2007 (*Magyar Közlöny* 2007/1.)] precludes his or her settlement.

…

3. With regard to subparagraph 2(c), designated specialist State authorities shall be requested to provide an official assessment in accordance with the provisions of Law No II of 2007 on the entry and residence of third-country nationals which relate to the grant of settlement permits.

4. Where a third-country family member of a Hungarian citizen has a valid residence card or permanent residence card, that card shall be withdrawn if:

…

(b) the third-country national's residence constitutes a threat to public policy, public security or national security in Hungary.

5. For each specific case referred to in subparagraph 4(b), the designated specialist State authorities shall be requested to provide an official assessment in accordance with the provisions of Law No II of 2007 on the entry and residence of third-country nationals which relate to the grant of settlement permits.'

10 Paragraph 33(1) and (2) of Law No II of 2007 on the entry and residence of third-country nationals provides:

'1. An interim settlement permit, national settlement permit or EC settlement permit shall be issued to any third-country national:

…

(c) in respect of whom there is no ground for refusal as provided for in this Law.

2. No interim settlement permit, national settlement permit or EC settlement permit shall be issued to a third-country national:

…

(b) whose settlement in Hungary constitutes a threat to public security or national security.'

11 Paragraph 87/B(4) of that law states:

'The opinion of the specialist State authority is, with regard to specific cases, binding for the immigration authority concerned.'

12 Paragraph 11 of a minősített adat védelméről szóló 2009. évi CLV. törvény (Law No CLV of 2009 on the protection of classified information) of 29 December 2009 (*Magyar Közlöny* 2009/194.) provides:

'1. Data subjects shall be entitled to take cognisance of their personal data, which has been categorised as national classified information, on the basis of an access authorisation issued by the classifying authority and shall not require personal security clearance. Before taking cognisance of national classified information, the data subject shall be required to make a written confidentiality declaration and comply with the provisions governing the protection of national classified information.

2. On request by the data subject, the classifying authority shall decide within 15 days whether to grant the access authorisation. The classifying authority shall refuse the access authorisation if taking cognisance of the information harms the public interest on which the categorisation is based. The classifying authority shall state reasons for refusing the access authorisation.

3. Where the access authorisation is refused, the data subject may appeal that decision in contentious administrative proceedings. …'

13 Paragraph 12(1) of that law states:

'The authority processing the classified information may deny the data subject the right to access his or her personal data if the public interest on which the categorisation is based would be compromised by exercise of that right.'

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

Case C-420/22

14 NW, a third-country national, married a Hungarian national in 2004. A child of Hungarian nationality was born of that marriage in 2005. NW is bringing up his child with his wife.

15 After NW had been residing legally in Hungary for more than five years, the Hungarian authorities issued him with a permanent residence card valid until 31 October 2022, taking into account his family situation.

16 By a non-reasoned opinion of 12 January 2021, the Alkotmányvédelmi Hivatal (Constitutional Protection Office, Hungary) decided that NW's residence in Hungary was contrary to that Member State's national security interests. That specialist authority categorised the data on which it relied in order to give that opinion as classified information. The opinion was confirmed on 13 April 2021 by the Minister for the Interior, as the specialist authority of second instance.

17 By decision of 22 January 2021, the immigration police authority of first instance withdrew NW's permanent residence card and ordered him to leave Hungary, on the ground that his residence in that territory was a threat to the national security of that Member State.

18 That decision was confirmed on 10 May 2021 by the Directorate for the Immigration Police, on the ground that the Minister for the Interior had found that NW's residence in Hungarian territory was contrary to Hungary's national security interests. In its decision, the Directorate for

the Immigration Police found that, under Hungarian legislation, it could not depart from the opinion of the Minister for the Interior and that it was therefore required to withdraw NW's permanent residence card, without taking account of his personal circumstances.

19 NW has brought an action against the decision of the Directorate for the Immigration Police of 10 May 2021 before the Szegedi Törvényszék (Szeged High Court, Hungary), which is the referring court.

20 That court notes that that decision is based solely on the binding and non-reasoned opinions issued by the specialist State authorities, namely the Constitutional Protection Office and the Minister for the Interior, opinions which are based on classified information to which neither NW nor the authorities ruling on residence have had access. Those authorities have not therefore examined the necessity and proportionality of that decision.

21 The referring court points out that it is apparent from the case-law of the Kúria (Supreme Court, Hungary) that, in a situation such as that at issue in the main proceedings, the procedural rights of the person concerned are guaranteed by the power of the court having jurisdiction, with a view to assessing the lawfulness of the decision on residence, to consult the classified information on which the opinion of the specialist authorities is based. Such a court must therefore verify, when requested to do so by an applicant, whether the facts and data on which the opinion concerned is based justify that decision, without, however, being able to include in its ruling the classified information to which it has had access.

22 Furthermore, pursuant to Hungarian legislation, neither the person concerned nor his or her representative has a specific opportunity to comment on the non-reasoned opinion of those authorities. While that person or that representative admittedly has the right to submit a request for access to classified information concerning that person, the referring court notes that the protection of the public interest on which the categorisation of the information as classified information was based prevails, in principle, over the private interest of the person concerned, since the existence of a ground for such categorisation is, in essence, a sufficient reason for rejecting a request for an access authorisation from the person concerned.

23 In any event, even if such a request were granted, neither the person concerned nor his or her representative could use the classified information to which they were granted access in an administrative procedure or judicial proceedings, since authorisation to draw up a written document containing the substance of that information is in practice refused to them. The court with which an appeal is lodged against a decision on residence has no power under Hungarian law in that regard.

24 In those circumstances, the Szegedi Törvényszék (Szeged High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 10(1) of [Directive 2003/109], in conjunction with Article 47 of the [Charter] – and also, in this specific case, with Articles 7 and 24 of the Charter – be interpreted as meaning that the authority of a Member State which, on grounds of national security and/or public policy or public security, has adopted a decision ordering the withdrawal of a long-term residence permit which had previously been issued, and the specialised authority which has determined that the matter is confidential, must ensure there is a guarantee that in all circumstances the person concerned, who is a third-country national, and his or her legal representative, are entitled to know at least the essence of the confidential or classified

information and data underpinning the decision which is based on those grounds and to use that information or those data in the proceedings concerning [that] decision, where the responsible authority considers that such disclosure would be contrary to the interests of national security?

(2) If the answer is in the affirmative, what precisely must be understood by the "essence" of the confidential grounds on which that decision is based, having regard to Articles 41 and 47 of the Charter?

(3) Having regard to Article 47 of the Charter, must Article 10(1) of Directive 2003/109 be interpreted as meaning that, where a court of a Member State rules on the legality of the opinion of the specialised authority which is based on grounds relating to confidential or classified information and on the legality of the substantive immigration decision adopted on the basis of that opinion, it must have jurisdiction to examine the legality of the confidentiality (its necessity and proportionality) and, if it considers that the confidentiality is unlawful, to order, of its own motion, that the person concerned and his or her legal representative may know and use all the information on which the opinion and the decision issued by the administrative authorities are based, or alternatively, if it considers that the confidentiality claim is lawful, that the person concerned may know and use at least the essence of the confidential information in the immigration proceedings in which he or she is concerned?

(4) Must Article 9(3) and Article 10(1) of Directive 2003/109, in conjunction with Articles 7 and 24[,] Article 51(1) and Article 52(1) of the Charter, be interpreted as precluding legislation of a Member State under which an immigration decision ordering the withdrawal of a long-term residence permit which had previously been issued takes the form of a non-reasoned decision which:
   (a) is based solely on automatic reference to a – likewise non-reasoned – binding and mandatory opinion by the specialised authority which identifies a danger or harm to national security, public policy or public security; and
   (b) has therefore been adopted without an in-depth examination of whether the grounds of national security, public policy or public security exist in the specific case in question, and without taking into account individual circumstances or the requirements of necessity and proportionality?'

25 By an order of 8 August 2022, received at the Court on the same day, the referring court supplemented the request for a preliminary ruling.

26 The referring court explained that, in that request, it had relied on the premiss that NW fell within the scope of Directive 2003/109. However, given that there is a relationship of dependency between NW and his minor child, if the Court were to find that that premiss is incorrect, it would be necessary to determine whether NW should enjoy a derived right of residence under Article 20 TFEU.

27 Accordingly, the referring court has added the following question to the questions already referred to the Court for a preliminary ruling:

'(a) Must Article 20 [TFEU], in conjunction with Articles 7 and 24 of the [Charter], be interpreted as precluding the practice of a Member State of adopting a decision ordering the withdrawal of a residence permit which had previously been issued to a third-country national whose minor child and whose spouse are nationals of a Member State of the European Union and live in that State, without first examining whether the family member concerned, who is a third-country national, is entitled to a derived right of residence pursuant to Article 20 TFEU?

(b) Must Article 20 TFEU, in conjunction with Articles 7 [and] 24, [Article 51(1)] and [Article 52(1)] of the Charter, be interpreted as meaning that, in so far as a derived right of residence is applicable pursuant to Article 20 TFEU, the effect of EU law is that national administrative and judicial authorities must also apply EU law when adopting an immigration decision ordering the withdrawal of a permanent residence permit, and when applying the national security, public policy or public security exceptions on which that decision is based and, where such grounds are established, when examining the necessity and proportionality justifying the limitation of the right of residence?

(c) In the event that the applicant [in the main proceedings] falls within the scope of Article 20 TFEU, the referring court asks the Court of Justice to reply also in the light of that article to the first to fourth questions referred for a preliminary ruling …'

Case C-528/22

28 PQ, a third-country national, entered Hungary lawfully in June 2005 as a professional football player and has since resided legally in that Member State. He has been living with his Hungarian partner since 2011. They have two children, born in 2012 and 2021, who have Hungarian nationality.

29 PQ has joint parental authority with his partner over their children. He lives permanently with them and is their primary carer most of the time. His children have a close emotional bond and a relationship of dependency with PQ, who has looked after them constantly since they were born.

30 By a non-reasoned opinion of 9 September 2020, the Constitutional Protection Office decided that PQ's residence in Hungary was contrary to that Member State's national security interests. That specialist authority categorised the data on which it relied in order to give that opinion as classified information. The opinion was confirmed on 12 February 2021 by the Minister for the Interior, as the specialist authority of second instance.

31 By decision of 27 October 2020, the immigration police authority of first instance rejected an application for a national settlement permit submitted by PQ.

32 That decision was confirmed, on 25 March 2021, by the Directorate for the Immigration Police, on the ground that the Minister for the Interior had found that PQ's residence in Hungarian territory was contrary to Hungary's national security interests. In its decision, the Directorate for the Immigration Police found that, under Hungarian legislation, it could not depart from the opinion of the Minister for the Interior and that it was therefore required to refuse PQ's application without taking into account his personal situation.

33 PQ has brought an action against the decision of the Directorate for the Immigration Police of 25 March 2021 before the Szegedi Törvényszék (Szeged High Court), which is the referring court.

34 That court sets out considerations similar to those set out in paragraphs 20 to 23 of the present judgment.

35 In those circumstances, the Szegedi Törvényszék (Szeged High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) (a) Must Article 20 [TFEU], in conjunction with Articles 7 and 24 of the [Charter,] be interpreted as meaning that it precludes a practice whereby a Member State adopts a decision ordering the withdrawal of a residence permit which had previously been issued to a third-country national – or refuses an application for an extension of the right of residence (in the present case, an application for a national permanent residence permit) – whose minor child and cohabiting partner are nationals of a Member State of the [European] Union and live in that Member State, without previously examining whether the family member concerned, [who is] a third-country national, can benefit from a derived right of residence under Article 20 TFEU?

(b) Must Article 20 TFEU, in conjunction with Articles 7 and 24[, Article 51(1) and Article 52(1)] of the Charter, be interpreted as meaning that, where there is a derived right of residence under Article 20 TFEU, EU law requires that national administrative authorities and courts must also apply EU law when adopting an immigration decision concerning an application for extension of the right of residence (in this case an application for a national permanent residence permit) and when they apply the national security, public policy or public security exceptions on which that decision is based and, where it is shown that those grounds exist, when they examine the necessity and proportionality justifying a limitation on the right of residence?

(2) Must Article 20 TFEU, in conjunction with Article 47 of the Charter – and also, in this specific case, with Articles 7 and 24 of the Charter – be interpreted as meaning that an authority of a Member State which, on grounds of national security and/or public policy or public security, has adopted a decision ordering the withdrawal of a long-term residence permit which had previously been issued – or makes a decision on an application for extension of the right of residence – and the specialised authority which has determined that the matter is confidential, must ensure there is a guarantee that in all circumstances the person concerned, who is a third-country national, and his or her legal representative, are entitled to know at least the essence of the confidential or classified information and data underpinning the decision which is based on those grounds and to use that information or those data in the proceedings concerning [that] decision, where the competent authority considers that such disclosure would be contrary to the interests of national security?

(3) If the answer is in the affirmative, what precisely must be understood by the “essence” of the confidential grounds on which that decision is based, having regard to Articles 41 and 47 of the Charter?

(4) Having regard to Article 47 of the Charter, must Article 20 TFEU be interpreted as meaning that, where a court of a Member State rules on the legality of the opinion of the specialised authority which is based on grounds relating to confidential or classified information and on the legality of the substantive immigration decision adopted on the basis of that opinion, it must have jurisdiction to examine the legality of the confidentiality (its necessity

and proportionality) and, if it considers that the confidentiality is unlawful, to order, of its own motion, that the person concerned and his or her legal representative may know and use all the information on which the opinion and the decision issued by the administrative authorities are based, or alternatively, if it considers that the confidentiality claim is lawful, that the person concerned may know and use at least the essence of the confidential information in the immigration proceedings concerning him or her?

(5) Must Article 20 TFEU, in conjunction with Articles 7 and 24[,] Article 51(1) and Article 52(1) of the Charter, be interpreted as precluding legislation of a Member State under which an immigration decision ordering the withdrawal of a long-term residence permit which had previously been issued or ruling on an application for extension of the right of residence, takes the form of a non-reasoned decision which:
   (a) is based solely on automatic reference to a – likewise non-reasoned – binding and mandatory opinion by the specialised authority which identifies a danger or harm to national security, public policy or public security; and
   (b) has therefore been adopted without an in-depth examination of whether the grounds of national security, public policy or public order exist in the specific case in question, and without taking into account individual circumstances or the requirements of necessity and proportionality?'

36 Given the connection between Cases C-420/22 and C-528/22, it is appropriate that they be joined for the purposes of the judgment.

The jurisdiction of the Court and the admissibility of the requests for a preliminary ruling

37 The Hungarian Government, without formally questioning whether the Court has jurisdiction or whether the requests for a preliminary ruling are admissible, submits that Directive 2003/109 is not applicable to the dispute in the main proceedings in Case C-420/22 and that Article 20 TFEU is not applicable to either of the disputes in the main proceedings, which means that the Charter is also not applicable to those disputes.

38 As regards, in the first place, the applicability of Directive 2003/109 to the dispute in the main proceedings in Case C-420/22, that government submits that NW was in possession of a residence permit on the basis of national legislation which is not intended to transpose that directive and which provides for the grant of such a permit without all the conditions laid down in that directive being satisfied.

39 In that regard, it should be noted that the referring court did indeed base its decision, in the order for reference, on the premiss that that directive is applicable to that dispute. However, in the order of 8 August 2022 referred to in paragraph 25 of the present judgment, the referring court considered that that premiss might be incorrect and invited the Court, should it consider that to be the case, to answer the questions referred on the basis of Article 20 TFEU.

40 In that context, it should be borne in mind that the Court has held that the system put in place by Directive 2003/109 clearly makes the acquisition of the status of long-term resident conferred by that directive subject to a specific procedure and to fulfilment of the conditions set out in Chapter II thereof (see, to that effect, judgment of 17 July 2014, *Tahir*, C-469/13, EU:C:2014:2094, paragraph 27 and the case-law cited).

41 Accordingly, pursuant to Article 4(1) of Directive 2003/109, Member States are to grant long-term resident status to third-country nationals who have resided legally and continuously for five years on their territory. The acquisition of that status is not however automatic. In accordance with Article 7(1) of that directive, the third-country national concerned must, for that purpose, lodge an application with the competent national authorities of the Member State in which he or she resides, which must be accompanied by documentary evidence establishing that he or she meets the conditions laid down in Articles 4 and 5 of the directive (judgment of 20 January 2022, *Landeshauptmann von Wien (Loss of long-term resident status)*, C-432/20, EU:C:2022:39, paragraph 24 and the case-law cited).

42 Therefore, the requirements relating to the withdrawal of long-term resident status set out in Articles 9 and 10 of Directive 2003/109 are applicable to a decision withdrawing a permanent residence permit only in so far as that status was acquired by the third-country national concerned on the basis of that directive.

43 Therefore, where a third-country national has been granted a residence permit of permanent or unlimited validity on terms that are more favourable than those laid down in that directive, as permitted by Article 13 thereof, withdrawal of that residence permit is not governed by the provisions of that directive.

44 In this instance, it is apparent from the answer given by the referring court to a request for clarification from the Court of Justice, first, that the permanent residence permit to which the dispute in the main proceedings in Case C-420/22 relates was granted to NW not on the basis of the Hungarian legislation transposing Directive 2003/109, but on the basis of other Hungarian legislation, and, second, that NW did not apply for a residence permit based on the former legislation.

45 It must therefore be held that the withdrawal of the residence permit which is the subject of the dispute in the main proceedings in Case C-420/22 does not fall within the scope of Directive 2003/109.

46 That finding is, moreover, supported by NW's assertion at the hearing that, on 22 June 2023, he submitted an application for a residence permit based on that directive; an application on which the competent authority has not yet taken a decision.

47 Therefore, the request for a preliminary ruling in Case C-420/22 is inadmissible in so far as it concerns Directive 2003/109.

48 As regards, in the second place, the applicability of Article 20 TFEU to the disputes in the main proceedings, the Hungarian Government submits, first of all, that, in Case C-420/22, the referring court exceeded its power by putting forward, of its own motion, a line of argument alleging infringement of that article. Next, that government submits that, in Case C-528/22, there is no relationship of dependency between PQ and the Hungarian members of his family, whereas the applicability of that article is subject to the existence of such a link. Lastly, in both cases, that government submits that the application of Article 20 TFEU should be ruled out since, first, the decisions at issue do not entail an obligation to leave Hungarian territory and, second, neither NW nor PQ has relied on that article before the competent Hungarian authorities.

49 In that regard, first of all, given that it is not for the Court to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and legal proceedings (see, to that effect, judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 30 and the case-law cited), the fact that the referring court may have exceeded the powers conferred on it by the Hungarian legislation by putting forward, of its own motion, a line of argument alleging infringement of Article 20 TFEU, even if it were established, would not be such as to establish that the request for a preliminary ruling in Case C-420/22 is inadmissible in so far as it concerns the interpretation of that article.

50 Next, the assertion that there is no relationship of dependency between PQ and the Hungarian members of his family directly contradicts the findings made by the referring court, which cannot be departed from by the Court of Justice.

51 In proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 61 and the case-law cited).

52 Lastly, the other arguments put forward by the Hungarian Government are inextricably linked to the answers to be given to the additional question in Case C-420/22 and to the first question in Case C-528/22.

53 It should be noted that, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 61 and the case-law cited).

54 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 62 and the case-law cited).

55 In the light of that presumption of relevance, it should be noted that where, as in this instance, it is not obvious that the interpretation or assessment of validity of a provision of EU law bears no relation to the facts of the main action or its purpose, the objection alleging the inapplicability of that provision to the case in the main action does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the questions raised (see, to that effect, judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 114 and the case-law cited).

56 In the light of all the foregoing considerations, the Court has jurisdiction to answer the requests for a preliminary ruling and those requests are admissible in so far as they relate to Article 20 TFEU.

Consideration of the questions referred

The first part of the additional question in Case C-420/22 and the first part of the first question in Case C-528/22

57 By the first part of the additional question in Case C-420/22 and by the first part of the first question in Case C-528/22, which it is appropriate to examine together, the referring court asks, in essence, whether Article 20 TFEU is to be interpreted as precluding the authorities of a Member State from withdrawing the residence permit of a third-country national who is a family member of Union citizens – nationals of that Member State who have never exercised their freedom of movement – or refusing to issue such a permit to such a person without having first examined whether there exists between that third-country national and those Union citizens a relationship of dependency which would, in practice, oblige those Union citizens to leave the territory of the European Union as a whole, in order to accompany that family member.

58 It is apparent from the Court's settled case-law that Article 20 TFEU precludes national measures which have the effect of depriving Union citizens of the genuine enjoyment of the substance of the rights conferred by virtue of their status as Union citizens (judgment of 27 April 2023, *M.D. (Ban on entering Hungary)*, C-528/21, EU:C:2023:341, paragraph 57 and the case-law cited).

59 However, the provisions of the FEU Treaty on citizenship of the European 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 a Union citizen's freedom of movement within the territory of the European Union (judgment of 7 September 2022, *Staatssecretaris van Justitie en Veiligheid (Nature of the right of residence under Article 20 TFEU)*, C-624/20, EU:C:2022:639, paragraph 51 and the case-law cited).

60 In that regard, the Court has held that there are very specific situations in which, despite the fact that secondary EU law on the right of residence of third-country nationals does not apply and the Union citizen concerned has not made use of his or her 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 citizenship of the European Union would otherwise be undermined if, as a consequence of refusal of such a right, that Union citizen were 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 (judgments of 27 April 2023, *M.D. (Ban on entering Hungary)*, C-528/21, EU:C:2023:341, paragraph 58, and of 22 June 2023, *Staatssecretaris van Justitie en Veiligheid (Thai mother of a Dutch minor child)*, C-459/20, EU:C:2023:499, paragraph 24 and the case-law cited).

61 However, a refusal to grant a right of residence to a third-country national is liable to undermine the effectiveness of citizenship of the European Union only if there exists, between that third-country national and the Union citizen concerned 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 (judgments of 27 April 2023, *M.D. (Ban on entering Hungary)*, C-528/21, EU:C:2023:341, paragraph 59, and of 22 June 2023, *Staatssecretaris van Justitie en Veiligheid (Thai mother of a Dutch minor child)*, C-459/20, EU:C:2023:499, paragraph 26 and the case-law cited).

62 The right of residence granted, pursuant to Article 20 TFEU, to a third-country national in his or her capacity as a family member of a Union citizen is thus justified on the ground that such residence is necessary in order for that Union citizen to be able genuinely to enjoy the substance of the rights conferred by that status for as long as the relationship of dependency with that national persists (judgment of 22 June 2023, *Staatssecretaris van Justitie en Veiligheid (Thai mother of a Dutch minor child)*, C-459/20, EU:C:2023:499, paragraph 33 and the case-law cited).

63 As can be seen from the Court's case-law, it is in the light of the intensity of the relationship of dependency between the third-country national concerned and the Union citizen, who is a family member of that third-country national, that the recognition of a right of residence under Article 20 TFEU must be assessed, and such an assessment must take account of all the circumstances of the case (judgment of 7 September 2022, *Staatssecretaris van Justitie en Veiligheid (Nature of the right of residence under Article 20 TFEU)*, C-624/20, EU:C:2022:639, paragraph 38 and the case-law cited).

64 In that context, it is important, in the first place, to point out that it follows from the foregoing that, in the very specific situations referred to in paragraph 60 of the present judgment, Article 20 TFEU does not merely preclude the removal of a third-country national, but requires that he or she be granted a right of residence.

65 It follows that that article may be relied on not only against decisions imposing an obligation on a third-country national to leave the territory of the Member State concerned, but also against decisions withdrawing the residence permit of a third-country national or refusing to issue such a permit to such a person (see, to that effect, judgments of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraph 78; of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraph 65; and of 22 June 2023, *Staatssecretaris van Justitie en Veiligheid (Thai mother of a Dutch minor child)*, C-459/20, EU:C:2023:499, paragraph 22).

66 However, since 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, because of the relationship of dependency between them, to leave the territory of the European Union, 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 conditions for obtaining, on the basis of other provisions and, in particular, on the basis of the applicable national legislation, a right of residence in the Member State of which that Union citizen is a national (see, to that effect, judgment of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)*, C-451/19 and C-532/19, EU:C:2022:354, paragraph 47 and the case-law cited).

67 Therefore, although the fact that a case relates to a decision which does not have the direct effect of imposing on the third-country national in question an obligation to leave the territory of the Member State concerned is not sufficient to exclude the application of Article 20 TFEU, that article nevertheless cannot validly be relied on where that third-country national may be granted a right of residence under another provision applicable in that Member State.

68 In the second place, as regards the investigation which must be carried out by the competent national authorities before the adoption of decisions such as those at issue in the main proceedings, 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 60 of the present judgment, be granted under Article 20 TFEU, the fact remains that those procedural arrangements cannot, however, compromise the effectiveness of that article (see, to that effect, judgment of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*, C-836/18, EU:C:2020:119, paragraph 51 and the case-law cited).

69 The Court has held, in that regard, that 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, as the person concerned is required to provide the evidence enabling them to assess whether the conditions for the application of that article are satisfied (see, to that effect, judgment of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*, C-836/18, EU:C:2020:119, paragraph 52 and the case-law cited).

70 However, in order to ensure the effectiveness of Article 20 TFEU, it is for the national authorities called upon to rule on the right of residence of a third-country national who is a family member of a Union citizen to assess, inter alia 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 60 of the present judgment (see, to that effect, judgments of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*, C-836/18, EU:C:2020:119, paragraph 53, and of 27 April 2023, *M.D. (Ban on entering Hungary)*, C-528/21, EU:C:2023:341, paragraph 65).

71 Therefore, it must be held that, as the Advocate General observed in point 77 of his Opinion, the national authorities must, when they consider, pursuant to the applicable national legislation, withdrawing the residence permit of a third-country national whose family ties with a Union citizen are known to them or refusing to issue such a permit to such a person, ensure, if necessary by gathering the information necessary for that purpose, that the decision which they will adopt does not mean that that Union citizen is obliged, in practice, to leave the territory of the European Union as a whole.

72 To that end, those authorities must, in particular, determine whether there is a relationship of dependency between the persons concerned, as described in paragraph 60 of the present judgment.

73 In the light of the principle recalled in paragraph 70 of the present judgment, where those authorities have information on the existence of family ties between the third-country national concerned and a Union citizen, the fact that that third-country national has not submitted an

application for a residence permit expressly based on Article 20 TFEU and that he or she has not specifically relied on that article before those authorities is not such as to exempt them from carrying out such a check.

74 In the light of all the foregoing considerations, the answer to the first part of the additional question in Case C-420/22 and the first part of the first question in Case C-528/22 is that Article 20 TFEU must be interpreted as precluding the authorities of a Member State from withdrawing the residence permit of a third-country national who is a family member of Union citizens – nationals of that Member State who have never exercised their freedom of movement – or refusing to issue such a permit to such a person without having first examined whether there exists between that third-country national and those Union citizens a relationship of dependency which would, in practice, oblige those Union citizens to leave the territory of the European Union as a whole, in order to accompany that family member where, first, that third-country national cannot be granted a right of residence under another provision applicable in that Member State and, second, those authorities have information on the existence of family ties between that third-country national and those Union citizens.

The fourth question and the second part of the additional question in Case C-420/22, and the fifth question and the second part of the first question in Case C-528/22

75 By (i) the fourth question and the second part of the additional question in Case C-420/22 and (ii) the fifth question and the second part of the first question in Case C-528/22, which it is appropriate to examine together, the referring court asks, in essence, whether Article 20 TFEU is to be interpreted as precluding national legislation which requires national authorities, on grounds of national security, to withdraw the residence permit of a third-country national who may enjoy a derived right of residence under that article or to refuse to issue such a permit to such a person, solely on the basis of a binding non-reasoned opinion adopted by a body entrusted with specialist functions linked to national security, without a rigorous examination of all the individual circumstances and of the proportionality of that decision to withdraw or to refuse a residence permit.

76 In the first place, it is apparent from the Court's settled case-law that the Member States may derogate, under certain conditions, from the derived right of residence, flowing from Article 20 TFEU, for a family member of a Union citizen such as that referred to in paragraph 60 of the present judgment, in order to maintain public policy or safeguard public security. That may be the case where the third-country national represents a real, immediate and sufficiently serious threat to public policy or public or national security (judgment of 27 April 2023, *M.D. (Ban on entering Hungary)*, C-528/21, EU:C:2023:341, paragraph 67 and the case-law cited).

77 However, a refusal of a right of residence based on that ground can result only from a specific assessment of all the relevant circumstances of the case, in the light of the principle of proportionality, the fundamental rights whose observance the Court ensures and, where appropriate, the best interests of the child of the third-country national concerned (see, to that effect, judgment of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)*, C-451/19 and C-532/19, EU:C:2022:354, paragraph 53 and the case-law cited).

78 Although EU law does not determine which authority must carry out that assessment, which forms an integral part of the examination to be carried out pursuant to Article 20 TFEU, the fact remains that a decision withdrawing the residence permit of a third-country national who may enjoy a derived right of residence under that article or refusing to issue a residence permit to such a person can be adopted only following such an assessment.

79 In the second place, given that EU law contains no rule defining precisely the practical arrangements for the examination to be carried out pursuant to Article 20 TFEU, those arrangements are a matter for the domestic legal order of each Member State, in accordance with the principle of the procedural autonomy of the Member States, provided that these are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights conferred by the European Union legal order (principle of effectiveness) (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 43 and the case-law cited).

80 In that regard, it must also be borne in mind that the Member States, when implementing EU law, are required to ensure compliance both with the requirements stemming from the general principle of sound administration and with the right to an effective remedy enshrined in the first paragraph of Article 47 of the Charter (see, to that effect, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraphs 35 and 44 and the case-law cited).

81 It follows from the Court's settled case-law that if the judicial review guaranteed by the first paragraph of Article 47 of the Charter is to be effective, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him or her is based, either by reading the decision itself or by requesting and obtaining notification of those reasons, without prejudice to the power of the court with jurisdiction to require the authority concerned to provide that information, so as to make it possible for the person concerned to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in applying to the court with jurisdiction, and in order to put the latter fully in a position in which it may carry out the review of the lawfulness of the national decision in question (judgment of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 43 and the case-law cited).

82 It follows from the foregoing considerations, in particular those relating to (i) the requirement to take into account all the relevant circumstances for the purposes of the application of Article 20 TFEU and (ii) the obligation to state reasons for decisions relating to that application, that a national authority which is competent as regards residence cannot validly confine itself to implementing a non-reasoned decision adopted by another national authority which has failed to comply with that requirement, and take, on that basis alone, the decision, on grounds of national security, to withdraw the residence permit of a third-country national who may enjoy a derived right of residence under that article or to refuse to issue such a permit to such a person (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 79).

83 That finding in no way precludes some of the information used by the competent authority in conducting its assessment referred to in paragraph 77 of the present judgment from being provided by bodies entrusted with specialist functions linked to national security, on their own initiative or at the request of that authority (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 82).

84 Similarly, that finding does not prevent a Member State from conferring on a body entrusted with specialist functions linked to national security the power to issue an opinion requiring, in a binding manner, the withdrawal of or refusal to issue such a residence permit, provided that that body complies with the obligation to state reasons and that it can adopt such an opinion only after having duly taken into account all the relevant circumstances referred to in paragraph 77 of the present judgment.

85 Accordingly, the answer to the fourth question and the second part of the additional question in Case C-420/22, as well as the fifth question and the second part of the first question in Case C-528/22, is that Article 20 TFEU, read in conjunction with Article 47 of the Charter, must be interpreted as precluding national legislation which requires national authorities, on grounds of national security, to withdraw the residence permit of a third-country national who may enjoy a derived right of residence under that article or to refuse to issue such a permit to such a person, solely on the basis of a binding non-reasoned opinion adopted by a body entrusted with specialist functions linked to national security, without a rigorous examination of all the individual circumstances and of the proportionality of that decision to withdraw or to refuse a residence permit.

The first and second questions in Case C-420/22 and the second and third questions in Case C-528/22

86 By the first and second questions in Case C-420/22 and the second and third questions in Case C-528/22, which it is appropriate to examine together, the referring court asks, in essence, whether the general principle of sound administration and Article 47 of the Charter, read in conjunction with Article 20 TFEU, are to be interpreted as precluding national legislation which provides that, where a decision to withdraw or to refuse a residence permit, adopted in respect of a third-country national who may enjoy a derived right of residence under Article 20 TFEU, is based on information the disclosure of which would compromise the national security of the Member State in question, that third-country national or his or her representative may have access to that information only after having obtained an authorisation to that effect, is not even informed of the substance of the grounds on which such decisions are based and cannot, in any event, use, for the purposes of an administrative procedure or judicial proceedings, the information to which they might have had access.

87 It should be noted at the outset that, in so far as EU law does not contain any specific rule defining the arrangements for access to the file relating to a procedure concerning the right of residence under Article 20 TFEU, the practical arrangements of the procedures established for that purpose are a matter for the legal order of each Member State, within the limits resulting from the principles and law referred to in paragraphs 79 and 80 of the present judgment.

88 It follows, in particular, that respect for the rights of defence of the person concerned must be guaranteed during both the administrative procedure and any judicial proceedings (see, to that effect, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 44 and the case-law cited).

89 In that connection, as regards, in the first place, the administrative procedure, it is apparent from the Court's settled case-law that observance of the rights of the defence means that the addressee of a decision which significantly affects his or her interests must be placed in a position, by the authorities of the Member States when they take decisions which come within the scope of EU law, in which he or she can effectively make known his or her views as regards the information on which the authorities intend to base their decision (judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 45 and the case-law cited).

90 The purpose of that requirement is, inter alia, in the context of a procedure relating to the application of Article 20 TFEU, to enable the competent authority to comply with its obligation, referred to in paragraph 85 of the present judgment, by carrying out, having full knowledge of the facts, an individual assessment of all the relevant circumstances, which requires that the addressee of that decision be able to correct an error or submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 46 and the case-law cited).

91 Since that requirement necessarily supposes that that addressee will be afforded, if necessary though an adviser, a concrete possibility to be aware of the evidence on which the authorities intend to base their decision, respect for the rights of the defence has as a corollary the right of access to all the material in the file during the administrative procedure (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 47 and the case-law cited).

92 As regards, in the second place, the judicial proceedings, respect for the rights of the defence means that an applicant must be able not only to ascertain the reasons upon which the decision taken in relation to him or her is based, but also to have access to all the material in the file on which the authority has based that decision, in order to be able effectively to comment on that material (see, to that effect, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 48 and the case-law cited).

93 Furthermore, the adversarial principle, which forms part of the rights of the defence, which are referred to in Article 47 of the Charter, means that the parties to a case must have the right to examine all the documents or observations submitted to the court for the purpose of influencing its decision, and to comment on them, which presupposes that the person subject to a decision on residence falling within the scope of EU law must be able to acquaint himself or herself with the material in his or her file which is made available to the court or tribunal called upon to rule on the appeal against that decision (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 49 and the case-law cited).

94 That being so, it should be borne in mind that the rights of the defence are not absolute rights, and the right of access to the file, which is the corollary thereto, may be limited on the basis of a weighing up of, on the one hand, the general principle of sound administration and the right to an effective remedy of the person concerned and, on the other, the interests relied on in order to justify the non-disclosure of an element of the file to that person, in particular where those

interests relate to national security (see, to that effect, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 50 and the case-law cited).

95 That weighing up cannot, however, lead, in the light of the necessary respect for Article 47 of the Charter, to depriving the rights of defence of the person concerned of all effectiveness and to rendering meaningless his or her right of redress stemming from that article, in particular by not informing that person, or, as the case may be, his or her representative, at the very least of the substance of the grounds on which the decision taken against him or her is based (see, to that effect, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 51 and the case-law cited).

96 That weighing up may, nevertheless, result in certain information in the file not being disclosed to the person concerned, where disclosure of that information is likely to jeopardise the security of the Member State concerned in a direct and specific manner, in that it may, in particular, endanger the life, health or freedom of persons or reveal the methods of investigation specifically used by bodies entrusted with specialist functions relating to national security and thus seriously impede, or even prevent, future performance of the tasks of those authorities (judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 52 and the case-law cited).

97 Therefore, although the Member States may, in particular where national security so requires, decide not to grant the person concerned direct access to the entirety of his or her file in the context of a procedure relating to Article 20 TFEU, they cannot, without acting in breach of the principle of effectiveness, the general principle of sound administration and the right to an effective remedy, place the person concerned in a situation where neither that person nor his or her representative would be able to gain effective knowledge, where applicable in the context of a specific procedure designed to protect national security, of the substance of the decisive material contained in that file (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 53).

98 In that context, it must be held that, where the disclosure of information placed on the file has been restricted on grounds of national security, respect for the rights of defence of the person concerned is not sufficiently guaranteed by the possibility for that person to obtain, under certain conditions, authorisation to access that information, together with a complete prohibition on using the information thus obtained for the purposes of the administrative procedure or any judicial proceedings (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 54).

99 In addition, given that it is apparent from the orders for reference that the legislation at issue in the main proceedings is based on the consideration that the rights of defence of the person concerned are sufficiently guaranteed by the power of the court having jurisdiction to have access to the file, it must be pointed out that such an option cannot replace access to the information placed on that file by the person concerned or his representative (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 57).

100 Respect for the rights of the defence in judicial proceedings means that the person concerned, where appropriate through an adviser, may defend his or her own interests by expressing his or her point of view on that information (see, by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 58).

101 In the light of all the foregoing considerations, the answer to the first and second questions in Case C-420/22 and the second and third questions in Case C-528/22 is that the general principle of sound administration and Article 47 of the Charter, read in conjunction with Article 20 TFEU, must be interpreted as precluding national legislation which provides that, where a decision to withdraw or to refuse a residence permit, adopted in respect of a third-country national who may enjoy a derived right of residence under Article 20 TFEU, is based on information the disclosure of which would compromise the national security of the Member State in question, that third-country national or his or her representative may have access to that information only after having obtained an authorisation to that effect, is not even informed of the substance of the grounds on which such decisions are based and cannot, in any event, use, for the purposes of an administrative procedure or judicial proceedings, the information to which they might have had access.

The third question in Case C-420/22 and the fourth question in Case C-528/22

102 By the third question in Case C-420/22 and the fourth question in Case C-528/22, which it is appropriate to examine together, the referring court asks, in essence, whether Article 47 of the Charter, read in conjunction with Article 20 TFEU, is to be interpreted as requiring a court which is responsible for reviewing the legality of a decision on residence under Article 20 TFEU, based on classified information, to have the power to verify the lawfulness of the categorisation of that information as classified and to authorise access by the person concerned to all of that information, in the event that it considers that that categorisation is unlawful, or the substance of that information, if it considers that that categorisation is lawful.

103 It is clear that the rules on the categorisation of information as classified or non-classified under national legislation are not the subject of rules harmonised by an act of the European Union.

104 Similarly, EU law does not contain provisions defining precisely the powers which must be available to the national court having jurisdiction to hear an action brought against a decision on the right of residence under Article 20 TFEU.

105 The fact remains that, as is apparent from paragraphs 79 and 80 of the present judgment, those powers must be defined by national legislation in compliance with, inter alia, Article 47 of the Charter.

106 The Court has held that it would be incompatible with the fundamental right to an effective legal remedy if a judicial decision were founded on facts and documents which the parties themselves, or one of them, have not had an opportunity to examine and on which they have therefore been unable to state their views (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 56).

107 However, it is open to the Member States, in order to avoid, for reasons of State security, in exceptional cases, precise and full disclosure to the person concerned of the grounds which constitute the basis of a decision on residence, to provide for techniques and rules of procedural law which accommodate, on the one hand, legitimate State security considerations regarding the

nature and sources of the information taken into account in the adoption of such a decision and, on the other, the need to ensure sufficient compliance with the person's procedural rights, such as the right to be heard and the adversarial principle (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 57).

108 The Court has held that a system in which the court having jurisdiction is able not only to examine all the grounds on which the decision at issue was taken and the evidence relating to those grounds, but also to verify whether or not the reasons relied on by the national authority relating to State security actually preclude the full disclosure of those grounds and that evidence, is compatible with Article 47 of the Charter (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraphs 58 and 59).

109 As regards judicial review of those reasons, the Court has held that it is sufficient, in order to ensure compliance with Article 47 of the Charter, that the court having jurisdiction may, if it considers that those reasons are invalid, give the national authority the opportunity to disclose the missing grounds and evidence to the person concerned (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 63).

110 In such a case, if the national authority decides not to disclose all the grounds and evidence relating thereto, the court having jurisdiction must, in order to comply with Article 47 of the Charter, carry out an examination of the legality of the decision at issue on the basis of only those grounds and evidence which have been disclosed (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 63).

111 Conversely, if the court having jurisdiction finds that the reasons relied on by the national authority preclude the full disclosure of those grounds and that evidence, the Court has held that the court having jurisdiction may take those grounds and that evidence into account by appropriately weighing up the relevant requirements and has noted that, where that court intends to do so, it must ensure that the substance of the grounds which constitute the basis of the decision at issue is communicated to the person concerned in a manner which takes due account of the necessary confidentiality of the evidence (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraphs 64 to 68).

112 However, the Court has also stated that, where there has been a failure to fulfil that obligation to inform the person concerned, the court having jurisdiction is required, under national law, to draw the appropriate conclusions from that failure (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 68).

113 It follows from the foregoing, first, that the disclosure of all or part of the grounds and evidence must, where appropriate, be considered by the court having jurisdiction, irrespective of how they may have been categorised, and, second, that it is open to the Member States to reserve to the authorities in question the power to disclose or refuse to disclose those grounds or that evidence, provided that the court having jurisdiction has the power to draw the appropriate conclusions from the decision ultimately taken in that regard by those authorities.

114 In any event, where the national authority unjustifiably impedes the disclosure of all or part of the evidence on which the decision at issue is based, that solution is such as to ensure full compliance with Article 47 of the Charter, in that it guarantees that the authority's failure to comply with its

procedural obligations will not result in the judicial decision being based on facts and documents which the applicant has not had the opportunity to examine and on which he or she has therefore been unable to comment.

115 Therefore, as the Advocate General observed in point 130 of his Opinion, it cannot be considered that that article means that the court with jurisdiction to review a decision on the application of Article 20 TFEU must necessarily have the power to categorise certain information as non-classified and to disclose, of its own motion, that information to the applicant, since such declassification and disclosure is not essential in order to ensure effective judicial protection when assessing the legality of the contested decision.

116 Consequently, the answer to the third question in Case C-420/22 and the fourth question in Case C-528/22 is that Article 47 of the Charter, read in conjunction with Article 20 TFEU, must be interpreted as not requiring a court which is responsible for reviewing the legality of a decision on residence under Article 20 TFEU, based on classified information, to have the power to verify the lawfulness of the categorisation of that information as classified and to authorise access by the person concerned to all of that information, in the event that it considers that that categorisation is unlawful, or the substance of that information, if it considers that that categorisation is lawful. However, in order to ensure that that person's rights of the defence are respected, that court must, where relevant, draw the appropriate conclusions from any decision taken by the competent authorities not to disclose all or part of the grounds for that decision and the evidence relating thereto.

Costs

117 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 (First Chamber) hereby rules:

1. **Cases C-420/22 and C-528/22 are joined for the purposes of the judgment.**

2. **Article 20 TFEU must be interpreted as precluding the authorities of a Member State from withdrawing the residence permit of a third-country national who is a family member of Union citizens – nationals of that Member State who have never exercised their freedom of movement – or refusing to issue such a permit to such a person without having first examined whether there exists between that third-country national and those Union citizens a relationship of dependency which would, in practice, oblige those Union citizens to leave the territory of the European Union as a whole, in order to accompany that family member where, first, that third-country national cannot be granted a right of residence under another provision applicable in that Member State and, second, those authorities have information on the existence of family ties between that third-country national and those Union citizens.**

3. **Article 20 TFEU, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation which requires national authorities, on grounds of national security, to withdraw the residence permit of a third-country national who may enjoy a derived right of residence**

under that article or to refuse to issue such a permit to such a person, solely on the basis of a binding non-reasoned opinion adopted by a body entrusted with specialist functions linked to national security, without a rigorous examination of all the individual circumstances and of the proportionality of that decision to withdraw or to refuse a residence permit.

4. **The general principle of sound administration and Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 20 TFEU, must be interpreted as precluding national legislation which provides that, where a decision to withdraw or to refuse a residence permit, adopted in respect of a third-country national who may enjoy a derived right of residence under Article 20 TFEU, is based on information the disclosure of which would compromise the national security of the Member State in question, that third-country national or his or her representative may have access to that information only after having obtained an authorisation to that effect, is not even informed of the substance of the grounds on which such decisions are based and cannot, in any event, use, for the purposes of an administrative procedure or judicial proceedings, the information to which they might have had access.**

5. **Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 20 TFEU, must be interpreted as not requiring a court which is responsible for reviewing the legality of a decision on residence under Article 20 TFEU, based on classified information, to have the power to verify the lawfulness of the categorisation of that information as classified and to authorise access by the person concerned to all of that information, in the event that it considers that that categorisation is unlawful, or the substance of that information, if it considers that that categorisation is lawful. However, in order to ensure that that person's rights of the defence are respected, that court must, where relevant, draw the appropriate conclusions from any decision taken by the competent authorities not to disclose all or part of the grounds for that decision and the evidence relating thereto.**

[Signatures]