

CJEU ? C-836/18 RH, 27 February 2020

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27-02-2020

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CJEU, C-836/18 RH, 27 February 2020

Additional Citation:

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Court Name:

Court of Justice of the EU

Keywords:[Family member](#) [1][Family reunification](#) [2][Family unity \(right to\)](#) [3][Residence document](#) [4]

Relevant Legislative Provisions:European Union Law

Headnote:

A Union citizen's lack of sufficient resources for their family member, who is a third-country national, not to become a burden on the national social system, cannot sufficiently establish a reason to refuse a derived right of residence on the basis of article 20 TFEU, if that refusal would result in the national having to leave the territory of the EU.

Secondly, a relationship of dependency does not exist solely because the national law requires spouses to live together.

Facts:

In 2015 a Moroccan national (RH) married a Spanish national that had never exercised the freedom of movement within the EU. An application for a temporary residence card was rejected because RH's wife had not shown she had sufficient resources to support RH for him not to become a burden on the social assistance system on the basis of Article 7 of the Royal Decree 240/2007 that partly transposed Directive 2004/38/EC (Citizens' Rights Directive = CRD) into

Spanish national law. RH appealed this decision before the Administrative Court No 2 of Ciudad Real that upheld his action; the Spanish Government appealed against that judgment before the referring court.

The referring court noted that, given the Spanish Civil Code's obligation for spouses to live together, the Spanish national in this case would be compelled to leave the European Union altogether if the third-country national's legal residence were dependent on economic criteria. Such a situation would effectively deprive the Spanish national of the effective enjoyment of the freedom of movement.

Consequently, a question was referred to the CJEU on whether a relationship of dependency exists between the spouses on the sole ground that they are required by the Spanish law to live together. The second question concerns the interpretation of Article 20 TFEU as precluding a member state from rejecting an application for family reunification on the sole ground that that Union citizen does not have sufficient resources not to become a burden to the national social assistance system without having examined a possible relationship of dependency, if this rejection would result in compelling the EU citizen to leave the territory of the Union altogether.

Decision & Reasoning:

Second question

The Court reiterated that Art. 20 TFEU confers EU citizenship on every national of an EU Member State. In that context, Art. 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.

However, a third-country national has no autonomous right on the basis of article 20 TFEU, only a derived right. A right of residence must be granted to a third-country national if the EU citizen would be obliged in practice to leave the EU altogether as a result a relationship of dependency between the Union citizen and his or her family member. This relationship of dependency, however, is not absolute and can be derogated from by the Member State on the basis of reasons of public security, public policy or public health.

The question that arises in this case is whether this right of residence can be refused solely on the basis of insufficient resources. The Court looks into Article 7 of the EU Charter of Fundamental Rights (CFREU) securing the right to respect for private and family life in combination with the proportionality principle. It that a purely economic measure cannot be equated with measures of public policy, security or health. A refusal of the right of residence solely on this basis is disproportionate and does not justify such a serious interference with family life. To conclude, the sole ground of insufficient resources precludes a Member State to provide an exception under Article 20 TFEU to the derived right of residence.

First question

The first question regards the relationship of dependency. The Court is asked whether a relationship of dependency exists on the sole ground that spouses are required to live together under the Spanish law. A relationship of dependency is interpreted by the Court as one where there is no possible form of separation. Such a situation of impossible separation can only be found in exceptional cases.

The Court observed that the mere fact that a Union citizen might desire, for economic or for family

reasons, to be able to reside with the family member, who is a third-country national, on the territory of a MS, is not sufficient in itself to support the view that the Union citizen would be forced to leave the territory if such a residence right is refused. It follows that the existence of a family link is not sufficient to justify the grant of a derived right of residence.

Even where national law requires cohabitation of spouses, this cannot be interpreted as compelling a national to leave the state's territory because this obligation is not fulfilled; this would contravene an established principle of international law regarding the freedom of movement of nationals, also found in Article 3 of Protocol No 4 to the European Convention on Human Rights. Therefore, the Court stated that a relationship of dependency does not exist on the sole ground that spouses are required to live together under a Member State's national law.

Outcome:

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.

Observations/Comments:

This summary was written by Mina Boel.

Case Law Cited:

CJEU - C-165/16 - Lounes, 14 November 2017

CJEU - C-304/14 - CS, 13 September 2016

CJEU - C-93/18 - Bajratari, 2 October 2019

CJEU - C-200/02 - Zhu and Chen, 19 October 2004

CJEU - C-82/16 K. A. e.a. (Regroupement familial en Belgique), 8 May 2018

CJEU - C-304/14 CS, 13 September 2016

CJEU - C-165/14 Rendon Marin, 13 September 2016

Attachment(s):



[CURIA - Documents C836 18.pdf](#)[5]

Authentic Language:

English

Country of preliminary reference:

Spain

National / Other Legislative Provisions:

Article 32 of the Spanish Constitution

Article 68 of the Código Civil (Civil Code)

Article 70 of the Código Civil (Civil Code)

Articles 1

2 and 7 of the Royal Decree 240/2007

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2481

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2482

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A196

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2489

[5] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CURIA%20-](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CURIA%20-%20Documents%20C836%2018.pdf)

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