

Analysis



Silvia Bartolini

“Another Piece of the Puzzle Surrounding the Application of Article 20 TFEU”

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Suggested citation: Silvia Bartolini, “Another Piece of the Puzzle Surrounding the Application of Article 20 TFEU”, EU Law Live, 2 March 2020

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Last Thursday, the Court of Justice of the European Union delivered its judgment in *Subdelegación del Gobierno en Ciudad Real v RH* ([C-836/18](#)) on the conditions for the application of Article 20 of the Treaty on the Functioning of the European Union (TFEU).

The request was made by the High Court of Castilla-La Mancha (*Tribunal Superior de Justicia de Castilla-La Mancha*) and essentially revolved around the issue as to whether it is contrary to Article 20 TFEU to *automatically* refuse a derived right of residence to a third-country national family member of a European Union citizen who has never exercised his or her free movement right on the sole ground that that EU citizen does not have sufficient economic resources not to become a burden for the national social assistance system.

In its judgment, the Court of Justice firstly points out that – in the absence of a cross-border element – an application for family reunification involving a third-country national and an EU citizen falls within the scope of national law. Therefore, Member States remain in principle free to submit such an application to a condition of sufficient resources. However, the Court of Justice makes

clear that a systematic imposition – without any exception – of such a condition may indeed breach Article 20 TFEU.

Secondly, the Court of Justice recalls that Article 20 TFEU precludes the Member States from refusing a derived right of residence to a third-country national family member of an EU citizen – even in the absence of a cross-border element – where such a refusal will have the effect of obliging the EU citizen, by virtue of their relationship of dependency with the third-country national concerned, to leave the territory of the EU as a whole. Therefore, a third-country national family member of an EU citizen may – as a last resort – be protected under Article 20 TFEU. Whilst the Court of Justice notes that a derived right of residence is not absolute, it points out that an exception to that right must take into account both Article 7 of the Charter of Fundamental Rights and the principle of proportionality. Against this background, the Court of Justice finds a refusal based *solely* on a condition of sufficient resources disproportionate where there is a relationship of dependency between the third-country national and the EU citizen concerned. An exception to the derived right of residence allowed with the view of pursuing an economic objective,

namely protecting the Member States' public finances, does not justify such serious interference with the effective enjoyment of the substance of the rights deriving from EU citizenship.

Thirdly, the Court of Justice points out that the third-country national and the EU citizen concerned *must be free* to provide the competent national authority with evidence substantiating their relationship of dependency. The competent national authority – on their side – must assess such evidence and, if necessary, carry out an investigation to determine whether such a relationship of dependency exists. Therefore, that authority cannot automatically reject an application solely based on a condition of sufficient resources.

Finally, the Court of Justice observes that a relationship of dependency between adults capable of triggering Article 20 TFEU is conceivable only in exceptional circumstances. Unlike minors, adults are, in principle, capable of leading an autonomous life. In this regard, the existence of a family link, whether natural or legal, between the EU citizen and the third-country national family member concerned, is not sufficient. The Court of Justice further rules that a Member State cannot lawfully require one of its

nationals to leave its territory and further dismisses the possibility that a national legal requirement on the spouses to live together equates to an obligation to leave EU territory.

In *Subdelegación del Gobierno en Ciudad Real*, the Court of Justice provides a ruling on new elements surrounding the application of Article 20 TFEU and confirms that the condition of the existence of a 'relationship of dependency' between two adults is very hard to meet. As opposed to situations involving children, the protection of adults under Article 20 TFEU is limited only to exceptional cases. One may perhaps wonder whether such a protection will be triggered only concerning medical care where, for instance, the third country national in question is seriously ill and relies entirely on the EU citizen family member to meet their daily needs.

Silvia Bartolini holds a PhD in EU Law from King's College London and is a visiting lecturer at the University of Kent and Université Catholique de Lille. Her most recent publication is: 'In the Name of the Bests Interests of the Child: the Principle of Mutual Trust in Child Abduction Cases' (2019) Common Market Law Review.



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