Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 4 September 2025 [1]

**Case C-147/24 [Safi]** [i]

**V**

**v**

**Staatssecretaris van Justitie en Veiligheid**

(Request for a preliminary ruling from the rechtbank Den Haag (District Court, The Hague, Netherlands))

(Reference for a preliminary ruling – Citizenship of the Union – Article 20 TFEU – Static minor EU citizen dependent on a third-country national parent – Derived right of residence of the parent – Parent with a right of residence in a Member State other than that of the minor's nationality and residence – Return of illegally staying third-country nationals – Directive 2008/115/EC – Article 7 of the Charter of Fundamental Rights of the European Union – Right to private and family life – Article 24(2) and (3) of the Charter – Best interests of the child)

## I. Introduction

1. When can an EU citizen invoke the phrase '*Civis Europæus sum*' against his or her own Member State? [2]

2. The present case concerns a minor of Netherlands nationality, who has never exercised his EU-based right of free movement to leave his Member State, and who could be compelled by Netherlands authorities to leave that Member State and to move to Spain.

3. The competent Netherlands authorities refused to grant that minor's third-country national (TCN) mother a derived right of residence under Article 20 TFEU, on the basis of the TCN parent's right to reside in Spain. The authorities thus considered that Article 20 TFEU did not apply because the refusal to grant a right of residence would not result in the EU citizen in question (the TCN's child) being compelled to leave the territory of the European Union as a whole, but merely the territory of the Netherlands.

[1] Original language: English.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

[2] I have borrowed the words of Advocate General Jacobs who employed them, in his Opinion in *Konstantinidis* (C-168/91, EU:C:1992:504, point 46), in a different context predating the introduction of EU citizenship by the Maastricht Treaty. Advocate General Jacobs used those words to argue that an individual who moves to another Member State as a worker or self-employed person must be able to rely on human rights guaranteed by the EU legal system.

4. Does Article 20 TFEU confer a derived right of residence in such circumstances?

5. To answer, the Court will have to revisit the *Ruiz Zambrano* line of case-law. [3]

## II. The background, the questions referred and the procedure before the Court

6. V is a TCN, who lives in the Netherlands with her minor child, who has Netherlands nationality, and her spouse, who has dual nationality (that of the Netherlands and of a third country).

7. The child was born in the Netherlands and has never left the territory of that Member State. He is thus a static EU citizen. According to the order for reference, that child has speech and language difficulties, for which he receives special education and benefits from organised transportation to and from a special education institution.

8. V's spouse has a medical condition and receives social benefits.

9. V has been residing in the Netherlands since 2014, without a valid residence permit, and has never had any encounter with the justice system.

10. On 13 November 2020, V lodged an application for an EU/EEA document certifying her derived right of residence under Article 20 TFEU.

11. The Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands, 'the State Secretary') rejected V's application on 11 November 2021. It considered that she is not entitled to a derived right of residence under Article 20 TFEU, as her dependent minor child would not be compelled to leave the territory of the European Union as a whole, but could instead join her in Spain, where she enjoys a right of residence.

12. It is apparent from the order for reference that V, who resided in Spain between 1999 and 2014, still holds a valid residence permit in that Member State.

13. After rejecting her request as based on Article 20 TFEU, the State Secretary examined *ex officio* her right under Article 8 of the European Convention on Human Rights (ECHR), which protects private and family life. It found that she does not enjoy a right of residence under that provision either. Despite its finding that a private and family life did exist in the Netherlands, it held that the interests of the Netherlands in the area of immigration outweighed the personal interests of the applicant and her family.

14. That refusal to recognise V's right of residence in the Netherlands meant that she was illegally staying in the territory of that Member State. Therefore, on the basis of Directive 2008/115/EC, [4] the State Secretary ordered V to return immediately to Spain. [5] Failure to comply with that order would result in a return decision being issued against V.

[3] Judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, '*Ruiz Zambrano*', EU:C:2011:124).

[4] Directive of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

[5] Although not explained in the order for reference, that decision was most likely issued pursuant to Article 6(2) of Directive 2008/115.

15. V lodged a complaint against that decision which the State Secretary dismissed as manifestly unfounded on 20 June 2022.

16. On the same day, V lodged an appeal against that dismissal before the rechtbank Den Haag (District Court, The Hague, Netherlands), which is the referring court.

17. That court asks whether the circumstance that V holds a right of residence in another Member State (Spain) is a sufficient ground for refusing her a derived right of residence, despite the existence of a relationship of dependency between her and her minor child.[6] While relocation to Spain would mean that she and her minor child would not be compelled to leave the territory of the European Union as a whole, the child would nonetheless be obliged to leave the Netherlands, effectively compelling him to exercise his free movement right. The referring court also asks at what point consideration should be given to the best interests of the child and the right to family life in the process of assessing applications for a derived right of residence.

18. In addition, the referring court seeks to ascertain whether the obligation under Article 5(a) and (b) of Directive 2008/115 to consider the best interests of the child and the right to family life applies equally when a TCN is ordered to move immediately to another Member State under Article 6(2) thereof, as compared to a return decision under Article 6(1) of that directive.[7]

19. In the light of those considerations, the referring court, in summary proceedings, suspended the legal effects of the contested decision until such time that it was ready to rule on the merits of the appeal.

20. In those circumstances, the rechtbank Den Haag (District Court, The Hague) stayed the main proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 20 TFEU to be interpreted as meaning that it is not excluded that a third-country parent must be granted a derived right of residence in the Member State of which his or her minor child is a national and where his or her child resides without having made use of his or her citizenship rights, while that third-country parent has a right of residence in another Member State?

If it is not excluded that a third-country parent must be granted a derived right of residence in the Member State of which his or her minor child is a national and where his or her child resides without having made use of his or her citizenship rights, while that third-country parent has a right of residence in another Member State:

(2) Having regard to Article 5(a) and (b) of Directive 2008/115 and Article 6(2) of Directive 2008/115, does it follow from Article 20 TFEU, where a relationship of dependency exists, such as that which provides grounds for the grant of a derived right of residence under Article 20 TFEU, that there is an obligation on the decision-making authority to ascertain whether the exercise of the right of free movement and residence is in the best interests of the

[6] Despite the apparent existence of a relationship of dependency between V and her spouse, it would appear that the request for a residence permit was made solely on the basis of the relationship between V and her minor child.

[7] Under Article 6(1) of Directive 2008/115, 'Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.' Article 6(2) of that directive provides: 'Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State immediately. In the event of non-compliance by the third-country national concerned with this requirement, or where the third-country national's immediate departure is required for reasons of public policy or national security, paragraph 1 shall apply.'

child, and whether the exercise of family life can continue, before instructing the third-country parent to move immediately to the Member State where he or she holds a residence permit or other authorisation offering a right to stay, and should these factors be taken into account when assessing the application for a derived right of residence?'

21. A hearing was held on 25 March 2025 at which V, the Netherlands and Danish Governments and the European Commission submitted their arguments.

## III. Analysis

22. Article 20 TFEU grants a derived right of residence to a TCN when it is necessary to protect the citizenship rights of nationals of Member States. [8]

23. In the present case, the competent Netherlands authorities considered that it was not necessary to grant a derived right of residence to V in order to protect the EU citizenship rights of her minor child. The primary reason for that decision was the circumstance that V had a right to reside in Spain. That meant that, even though her minor child would also have to leave the Netherlands on account of his dependency on V, [9] he would not be compelled to leave the territory of the European Union as a whole. The decision-making authority considered that the family could settle in Spain, therefore Article 20 TFEU did not apply.

24. After deciding that V had no right of residence in the Netherlands, be it under EU law or on any other grounds, the competent authority ordered her to move immediately to Spain. That decision was based on Article 6(2) of Directive 2008/115.

25. In those circumstances, by its first question, the referring court asks, in essence, whether a TCN parent can rely on Article 20 TFEU in order to be granted a derived right of residence only where a dependent static minor EU citizen would otherwise be forced to leave the territory of the European Union as a whole, or whether there are other situations in which Article 20 TFEU is applicable.

26. By its second question, the referring court asks in essence whether Article 20 TFEU imposes an obligation on competent national authorities to assess whether ordering a TCN parent to move to another Member state is in conformity with the best interests of the child, and whether the private and family life of the persons concerned can continue in that other Member State, before making such an order. The referring court also seeks to ascertain whether those fundamental rights should be taken into account when deciding whether to grant a TCN parent a derived right of residence.

27. Although the answers to those two questions are closely linked, I will nevertheless analyse them separately, as the second question is asked only in the event that the first question is answered in the affirmative.

[8] See, for instance, paragraph 23 of the judgment of 22 June 2023, Staatssecretaris van Justitie en Veiligheid (Thai mother of a Dutch minor child) (C-459/20, '*X(Thai mother)*', EU:C:2023:499): '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.'

[9] It is implied in the national authority's reasoning that the degree of the child's dependency on V is such that if V had to leave the Netherlands, the child would also be compelled to leave.

28. I will propose to the Court that, in answer to the first question, it interpret Article 20 TFEU as being applicable, irrespective of whether or not a minor EU citizen and his or her TCN parent could move to another Member State, where that TCN parent has a right of residence.

29. In that respect, I will argue that the substance of EU citizenship rights protected by Article 20 TFEU encompasses the right *not to move* (A.2). Given that this interpretation is predicated on the Court's reasoning in *Ruiz Zambrano* and the case-law that followed, my analysis will begin by revisiting that judgment and its progeny (A.1). Should the Court not accept my proposed answer under A.2, I will offer an alternative analysis, suggesting that the competent decision-making authority should verify whether the relocation of an entire family to another Member State is indeed possible under EU law (A.3).

30. In reply to the second question of the referring court, I will elaborate on the *Ruiz Zambrano* line of case-law, demonstrating that that case-law requires that the competent authorities take account of the best interests of the child and the right to family life when assessing whether the degree of dependency between an EU citizen and a TCN is such that the EU citizen would be forced to accompany his or her TCN parent where that parent is forced to leave the Member State in which the dependent minor EU citizen is a national. If the decision-making authority finds that the dependency is of such a degree that Article 20 TFEU applies, then it must grant a derived right of residence in order to protect the dependent EU citizen's right not to move, even if that is to another Member State (B).

31. I will then apply the proposed reasoning to the circumstances of the case at hand (C).

## *A. The first question*

32. By its first question, the referring court asks in essence whether a derived right of residence can arise under Article 20 TFEU only if the EU citizen would otherwise be compelled to leave the territory of the European Union as a whole.

33. The basis for that question is a result of the standard formula developed in the case-law that followed *Ruiz Zambrano*. The wording of that formula is as follows: 'There are very specific situations in which, despite the fact that secondary law on the right of residence of [TCNs] does not apply and the Union citizen concerned has not made use of freedom of movement, a right of residence must nevertheless be granted to a [TCN] who is a family member of that Union citizen, since the effectiveness of Union citizenship would otherwise be undermined if, as a consequence of refusal of such a right, that citizen would be obliged in practice to leave the territory of the European Union as a whole, thus depriving him or her of the genuine enjoyment of the substance of the rights conferred by that status.' [10]

[10] The first time the Court used such wording was in its judgment of 8 November 2012, *Iida* (C-40/11, '*Iida*', EU:C:2012:691, paragraph 71). The Court has since repeated the same wording in many cases that have followed and which concerned, in one way or another, a derived right of residence of a TCN. The same wording thus exists in the judgments of 8 May 2013, *Ymeraga and Others* (C-87/12, '*Ymeraga*', EU:C:2013:291, paragraph 36,); of 10 October 2013, *Alokpa and Moudoulou* (C-86/12, '*Alokpa*', EU:C:2013:645, paragraph 32); of 13 September 2016, *CS* (C-304/14, '*CS*', EU:C:2016:674, paragraph 29); of 13 September 2016, *Rendón Marín* (C-165/14, '*Rendón Marín*', EU:C:2016:675, paragraph 74); of 10 May 2017, *Chavez-Vilchez and Others* (C-133/15, '*Chavez-Vilchez*', EU:C:2017:354, paragraph 63); of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)* (C-451/19 and C-532/19, '*Subdelegación del Gobierno en Toledo*', EU:C:2022:354, paragraph 45); of 27 April 2023, *M.D. (Ban on entering Hungary)* (C-528/21, '*M.D.*', EU:C:2023:341, paragraph 58); *X (Thai Mother)*, paragraph 24; and of 25 April 2024, *NW and PQ (Classified information)* (C-420/22 and C-528/22, '*NW and PQ*',EU:C:2024:344, paragraph 60). Despite references to both *Ruiz Zambrano* and sometimes the judgment of 15 November 2011, *Dereci and Others* (C-256/11, '*Dereci*', EU:C:2011:734), those judgments do not use that exact wording.

34. At first reading, that wording would seem to support the position of the Netherlands authorities that Article 20 TFEU confers a derived right of residence on a TCN only where a minor EU citizen would otherwise be compelled to leave the territory of the European Union as a whole.

35. However, a more careful reading of that case-law reveals that the Court did not intend to suggest that being compelled to leave the territory of the European Union as a whole is the only situation in which Article 20 TFEU can be applied in order to confer a derived right of residence on the TCN parent of an EU citizen. I will argue that, in addition to protecting the *right of EU citizens to reside in the European Union*, which was at issue in the aforementioned case-law, Article 20 TFEU also protects *the right of EU citizens to choose not to move*. The latter right is encompassed in the right 'to move and reside freely within the territory of the Member States', as conferred on EU citizens by Article 20(2)(a) and Article 21(1) TFEU, and to which I shall refer as 'the right to move and reside freely'.

### *1.* Ruiz Zambrano *and its progeny*

36. The facts in *Ruiz Zambrano* are well known. A Colombian father of two Belgian children who had never left that Member State relied on the EU citizenship of his children, invoking Article 20 TFEU, in support of his request for a derived right of residence and a work permit in Belgium. [11] The situation in that case was, to use the vocabulary of EU internal market law, an internal situation.

37. Before *Ruiz Zambrano*, the right to move and reside freely – the most prominent citizenship right – had only been applied in situations of cross-border movement. [12] That was likely the case on account of that right having its origins in the internal market. [13] Thus, a national of a Member State could not rely on Article 20 TFEU for protection against measures taken by his or her Member State, where he or she had never left that State in order to work, provide services, study or reside in another Member State.

38. That changed with *Ruiz Zambrano*, [14] the legacy of which has liberated the exercise of EU citizenship rights from the requirement of cross-border movement. [15]

[11] Mr Ruiz Zambrano's request was likely motivated by the earlier judgment of 19 October 2004, *Zhu and Chen* (C-200/02, '*Zhu and Chen*', EU:C:2004:639), in which the Court found that a derived right of residence may be granted to a TCN parent on the basis of the EU citizenship status of that person's minor child.

[12] See judgments of 5 June 1997, *Uecker and Jacquet* (C-64/96 and C-65/96, EU:C:1997:285, paragraph 23), and of 2 October 2003, *Garcia Avello* (C-148/02, EU:C:2003:539, paragraph 26). Within the internal market, the exclusion of internal situations from the scope of EU rules was often justified by the expectation that a Member State would take care of its own nationals, which is why EU law need not interfere with situations of reverse discrimination.

[13] For example, Nic Shuibhne, N., 'The Resilience of EU Market Citizenship?', *CMLR*, 2010, p. 1597.

[14] Arguably, the Court had already applied citizenship provisions in a purely internal situation in its judgment of 2 March 2010, *Rottmann* (C-135/08, '*Rottmann*', EU:C:2010:104). However, even though Mr Rottmann was challenging a decision by the German authorities to withdraw a naturalisation decision through which he acquired German nationality in Germany, the underlying context of that case implied earlier cross-border movement, as he was born and lived in Austria before he moved to Germany and lost his Austrian nationality due to his acquisition of German nationality. Nevertheless, when ruling on the case, the Court did not rely on that past movement. Rather, it considered that the potential loss of EU citizenship due to the loss of citizenship of a Member State falls within the scope of EU law 'by reason of its nature and its consequences' (*Rottmann*, paragraph 42).

[15] See, in that respect, Lenaerts, K. and Gutiérrez-Fons, J.A., 'Epilogue on EU citizenship: Hopes and Fears', in Kochenov, D. (ed.), *EU Citizenship and Federalism: The Role of Right*s, CUP, Cambridge, 2017, pp. 751 to 781, at p. 761.

39. Despite the lack of cross-border movement in that case by the Ruiz Zambrano children, the Court found that Article 20 TFEU was applicable. It ruled that that provision could be relied upon to preclude national measures 'which have the effect of *depriving* citizens of the Union of *the genuine enjoyment of the substance of the rights* conferred by virtue of their status as citizens of the Union'. [16]

40. The Court did not provide a general definition or explanation as to what may constitute a deprivation of the *genuine enjoyment* of citizenship rights, or what *the substance* of the rights conferred by EU citizenship status may be. It merely explained that the Ruiz Zambrano siblings would have been deprived of the genuine enjoyment of their citizenship rights had their father not been granted a right to reside and work in Belgium, because, if those rights had not been granted, the Ruiz Zambrano children would have been compelled to leave the territory of the European Union with their father. [17]

41. In *Ruiz Zambrano*, the potential consequence of those children having to leave the territory of the European Union as a whole arose on account of the particular circumstances of that case. In my view, that judgment cannot, therefore, be read as if the Court considered that it was only in those circumstances that an EU citizen could be deprived of the genuine enjoyment of his or her citizenship rights.

42. Nevertheless, the judgments that followed, starting with *McCarthy* [18] and *Dereci*, [19] began to associate 'genuine enjoyment' with the fact that an EU citizen would be forced to leave the territory of the European Union as a whole, using that criterion as the basis for the application of Article 21 TFEU in the former case, or Article 20 TFEU in the latter. Thus, being forced to leave the territory of the European Union as a whole began to be understood as a condition for the application of Article 20 TFEU. This also appears to be the understanding of the competent Netherlands authorities in the present case.

43. Some of the cases that followed, which also concerned a derived right of residence, arose out of circumstances in which, similarly to the situation in *Ruiz Zambrano*, minor EU citizens would have been compelled to move to a third country had the TCN, upon whom they were dependent, been refused a residence permit. [20] However, even in factually different cases, where there was no risk of an EU citizen being required to leave the territory of the Union as a whole, the Court continued to use the same formula from previous case-law which associates 'genuine enjoyment' with the possibility that an EU citizen would be forced to leave the territory of the European Union as a whole. [21]

[16] *Ruiz Zambrano*, paragraph 42 (emphasis added).

[17] *Ruiz Zambrano*, paragraphs 43 and 44.

[18] Judgment of 5 May 2011, *McCarthy* (C-434/09, '*McCarthy*', EU:C:2011:277, paragraph 50).

[19] *Dereci*, paragraph 66.

[20] See, for example, judgment of 6 December 2012, *O and Others* (C-356/11 and C-357/11, '*O and Others*', EU:C:2012:776); as well as the judgments in *CS* and in *Chavez-Vilchez*.

[21] For example, *Iida*, paragraph 71. That case concerned a TCN father who lived in Germany and relied on Article 20 TFEU to establish his derived right of residence, in a situation in which his daughter, a German citizen, had in the meantime moved to Austria to live with her mother, after the couple had divorced. The facts of that case did not reveal any possibility that that child, who was an EU citizen, would have been compelled to leave the European Union as a whole if the father had not been granted a residence permit in Germany. See, similarly, *Ymeraga*, paragraph 36.

44. Finally, in three cases on which the Netherlands Government relies in the present case – *Alokpa*,[22] *M.D.*[23] and *Rendón Marín*[24] – the Court seemed to suggest that Article 20 TFEU does not confer a derived right of residence on TCNs when EU citizens remain in the territory of the European Union, but are nonetheless compelled to relocate to a different Member State.

45. Those three cases may be distinguished from the present case in two ways: first, on their particular facts,[25] and, second and more significantly, on the differences in the framing of the questions referred by the national courts. As a result of path dependence in judicial dialogue between the national courts and the Court of Justice, those questions were framed in such a way that they required that the Court decide the cases in the context of the right to reside within the territory of the European Union; those contexts differ from the present case.[26]

46. Unlike in those cases, in the present case, the referring court, in essence, asks whether the deprivation of the right to reside within the territory of the European Union as a whole is indeed the only context in which a person cannot genuinely enjoy his or her EU citizenship rights.

47. Thus, unlike those previous cases, the Court is directly invited in the present case to answer the question whether EU citizens are protected under Article 20 TFEU only where they would otherwise be compelled to leave the territory of the European Union as a whole. The present case therefore affords the Court the opportunity to clarify further the 'substance' of citizenship rights, the genuine enjoyment of which is protected under Article 20 TFEU.

48. In sum, in all cases subsequent to *Ruiz Zambrano*, Article 20 TFEU has been interpreted as being applicable where an EU citizen would have been compelled to leave *the territory of the European Union as a whole*,[27] which has been understood as depriving that citizen of the genuine enjoyment of the substance of his or her citizenship rights.

49. Nevertheless, I think it important to note that the Court has never elaborated on how living in a third country actually deprives EU citizens of the enjoyment of their EU citizenship rights and which rights are at issue. Within the framework of the rights enshrined in Article 21 TFEU – 'the right to move and reside freely' – *the right to move to and to reside in another Member State* is, to my mind, not affected if an EU citizen lives in a third country. That is because, even if he or she is living in a third country, an EU citizen can still decide to enter and reside in a Member State other

22 *Alokpa*, paragraph 35.

23 *M.D.*, paragraph 62.

24 *Rendón Marín*, paragraph 79.

25 In *Alokpa*, minor EU citizens were forced to move to their Member State of nationality, and not from it. In *M.D.* and *Rendón Marín*, a derived right of residence was not granted or was revoked on grounds of public policy.

26 For example, in *Rendón Marín* (paragraph 78), the Court explicitly explained that it was deciding on the existence of a derived right of residence based on the specific context of that case, having regard to the right to reside, when it stated: the refusal of a residence permit 'could result in a restriction of that right, *in particular the right of residence*, as the children could be compelled to go with [Mr Rendón Marín], and therefore to leave the territory of the European Union as a whole' (emphasis added).

27 Even if this was not always expressed in exactly the same wording, and even if there are variations in the exact wording in different languages, the Court has, in essence, expressed this concern in the following judgments: *Dereci*, paragraph 66; *O and Others*, paragraph 47; *Ymeraga*, paragraph 36; *Alokpa*, paragraph 32; *Rendón Marín*, paragraph 74; *Chavez-Vilchez*, paragraph 63; *Subdelegación del Gobierno en Toledo*, paragraph 45; and *M.D.*, paragraph 58. .

than the Member State of his or her nationality, under the same conditions as those in which he or she might decide to make such a move from the Member State of his or her nationality.[28] Those conditions are governed by the Citizenship Directive.[29]

50. If the EU citizen moving to a Member State other than that of his or her nationality is a minor, it might be necessary that his or her TCN family member, upon whom he or she is dependent, be granted a derived right of residence. Under the Citizenship Directive, such a derived right may be granted if a child with EU citizenship moves to another Member State and has sufficient resources to be supported in that Member State, but cannot stay there without the TCN upon whom he or she is dependent.[30] The same would apply if the minor EU citizen moves to a Member State other than that of his or her nationality from a third country. If, however, the minor EU citizen lives in a third country, and decides to move to his or her Member State of nationality, the Citizenship Directive does not apply. Rather, it is Article 20 TFEU that applies for granting a derived right of residence to his or her TCN parent, upon whom that minor EU citizen is dependent.[31]

51. Preventing an EU citizen from being compelled to move to a third country does not therefore protect his or her citizenship-based right *to move to and to reside in another EU Member State*, as that right can also be exercised from that third country. However, preventing a *de facto* expulsion of an EU citizen from the territory of the European Union guarantees that citizen the possibility *of residing within the territory of the European Union*, which is one expression of 'the right to move and reside freely'.[32]

52. However, the fact that in *Ruiz Zambrano*, and in other cases thus far, the Court protected *the right to reside in the European Union* does not suggest, in itself, that this is the only citizenship right of a static EU citizen that comes under the protection of Article 20 TFEU.

53. Rather, in paragraph 42 of *Ruiz Zambrano*, the Court considered that 'Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union'. Thus, it was the deprivation of the enjoyment of citizenship *rights* that triggered the application of Article 20 TFEU. In paragraph 44 of that judgment, the Court further explained that denying residence and work permits to a TCN parent of minor EU citizens would result in the necessity that those children also leave the territory of the European Union to accompany their parent. That was regarded as depriving them of the genuine enjoyment of their citizenship rights, but not as the only situation in which such deprivation might occur.

[28] See also, in that respect also Davies, G., 'The Right to Stay at Home: A Basis for Expanding European Family Rights' in Kochenov, D. (ed.), footnote 15, op. cit., pp. 468 to 488, at p. 471. See also, Nic Shuibhne, N., '*Ruiz Zambrano* and the Essential Core of Union Citizenship', in Craig, P. and Schütze, R. (eds), *Landmark Cases in EU Law*, Vol. 2, Bloomsbury, 2025, pp. 169 to 185, at p. 178.

[29] Articles 5 to 7 and 14 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, OJ 2005 L 197, p. 34 and OJ 2007 L 204, p. 28; 'the Citizenship Directive').

[30] In that respect, see *Zhu and Chen*. Sufficient resources may be provided by the same TCN.

[31] In that respect, see *X (Thai mother)*.

[32] Apart from the wording of Articles 20 and 21 TFEU, which refer to the right to reside, one can connect this right with the benefits that arise from living within the territory of the European Union. That enables the enjoyment of a myriad of rights conferred on EU individuals by EU law, be they consumers, employees, or simply residents entitled to breathe clean air. However, those manifold rights belong to anyone residing in the territory of the European Union, not only to EU citizens – they are not *EU citizenship* rights, the deprivation of which the *Ruiz Zambrano* case-law is concerned with. However, this may explain the importance of recognising the fact that EU citizens have the right to reside in the territory of the European Union.

54. In the next section, I will propose that the Court interpret Article 20 TFEU as encompassing the right to choose not to move in the *substance of EU citizenship rights*, the *genuine enjoyment* of which is protected under that article.

*2. The right not to move as an element of the right of EU citizens to move and reside freely*

55. The wording of Articles 20 and 21 TFEU, the development of the concept of EU citizenship up to now, together with the case-law of the Court, demonstrate that the substance of the citizenship right to move and reside freely does not consist solely of the right to reside within the territory of the European Union as a whole.

56. I will argue that the substance of EU citizenship rights also encompasses the right of EU citizens to choose not to move.

57. First, in their wording, Articles 20 and 21 TFEU guarantee EU citizens not only the right to reside, but also the *right to move freely* within the territory of the EU Member States.

58. That entitlement to move is a right, not an obligation. That right must, therefore, entail a right not to move.

59. Additionally, by using the adverb *freely*, the text of the Treaty suggests that there is *a freedom* to move, which necessarily presupposes a choice as to whether or not to exercise that right. [33]

60. Second, the choice of EU citizens to reside in a Member State other than that of their nationality is protected by EU law, which, in principle, prohibits their expulsion. The expulsion of an EU citizen is only permitted if necessary for the protection of public policy and public security, [34] justifications which are themselves to be read narrowly. [35]

61. There is no reason to treat static EU citizens who can rely on Article 20 TFEU less favourably than mobile EU citizens. For that reason, in a situation in which a static EU citizen would be *de facto* compelled to leave the territory of his or her own Member State, his or her citizenship status protects that citizen's choice to stay in a similar way as it protects such a choice made by a mobile EU citizen.

62. Clearly, static EU citizens are protected from being expelled from their own Member States by international law, including Article 3 of Protocol No 4 to the ECHR. [36]

[33] In a slightly different context from that in the present case, Advocate General Sharpston proposed that 'what matters is the freedom to choose whether to move or not to move. A measure that imposes movement restricts that choice. It is therefore contrary to Article 21(1) TFEU.' See Opinion of Advocate General Sharpston in *O and Others* (C-456/12 and C-457/12, EU:C:2013:837, point 134). See also Sager, T., 'Freedom as Mobility – Implications of the Distinction between Actual and Potential Travelling', *Mobilities*, 2006, pp. 465 to 488. For a discussion on the possible right not to move in EU law, see Iglesias Sánchez, S., 'A Citizenship Right to Stay? The Right Not to Move in a Union Based on Free Movement' in Kochenov, D. (ed.), footnote 15, op. cit., pp. 371 to 393.

[34] See Article 28 of the Citizenship Directive.

[35] See, for example, judgment of 23 November 2010, *Tsakouridis* (C-145/09, EU:C:2010:708, paragraph 48), and the judgment in *CS*, paragraph 37.

[36] Thus, the Court recognised that, on the basis of international law, a Member State cannot refuse entry to its own national, nor deny his or her right to stay on the territory. See, for example, *McCarthy* paragraph 29, and judgment of 6 October 2021, *A (Crossing of borders in a pleasure boat)* (C-35/20, EU:C:2021:813, paragraph 69). However, it is worth noting that, in the present case, it is clear that the Netherlands authorities did not consider themselves prohibited by international law from *de facto* compelling their national to leave his country of nationality.

63. By guaranteeing the right not to move to a static EU citizen, Article 20 TFEU protects that citizen from *de facto* expulsion, thus guaranteeing his or her right to stay in his or her Member State of nationality.

64. Third, a large majority of the nationals of the EU Member States do not exercise their right to move.[37] Despite the fact that Article 20 TFEU confers EU citizenship status on all nationals of Member States, a large majority have chosen not to move.[38] That, however, does not mean that they are not EU citizens.[39]

65. Their citizenship status also requires legal protection.

66. Fourth, if EU citizenship status is, as the Court has established, a fundamental status of all nationals of the Member States,[40] the static majority of EU citizens cannot be excluded from the enjoyment of the rights pertaining to that status. After all, EU citizenship status could hardly be called fundamental if it were relevant only for a minority of nationals of the Member States who choose to move.[41]

67. Fifth, if the primary reason for the Court's protection of the right to reside within the territory of the European Union is to ensure that EU citizens are in a position to enjoy the rights conferred by EU law on individuals residing within that territory,[42] that same benefit is secured by recognising the right of an EU citizen not to move from his or her Member State of residence and nationality.

[37] As of 1 January 2022, there are 13.7 million 'mobile' EU citizens (citizens who have moved to live, work or study in another Member State). In 2021, 1.4 million people previously residing in one EU Member State migrated to another Member State. See European Commission, *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions under Article 25 TFEU on progress towards effective EU citizenship 2020-2023*, COM(2023) 931 final, p. 19. That means that less than 3% of EU citizens have exercised their right to move freely. In 2021, only around 0.2% of EU citizens exercised their right to free movement.

[38] In that respect, van Roermund, (G.C.G.J., 'Migrants, humans and human rights – The right to move as the right to stay', in Lindahl, H. (ed.), *A Right to Inclusion and Exclusion? Normative Fault Lines of the EU's Area of Freedom, Security and Justice*, Hart, Oxford, 2009, p. 171,) wrote: 'it is an utterly romantic idea to suggest that every individual is keen on being an explorer. For most people, freedom of movement is a right they would prefer not to exercise, as it alludes to a very different role-model: the model of the vulnerable vagrant rather than the self-assured servant.'

[39] In her article, Sara Iglesias Sánchez (footnote 33, op. cit., at pp. 388 and 389) presented the figures from a survey conducted in 2013, in which over 60% of EU citizens see themselves as citizens of the European Union, even if only a small percentage of them exercise their right to free movement. The latest (2025) Eurobarometer data show similar numbers: 63% of EU citizens feel attached to the European Union (Standard Eurobarometer 103 – Spring 2025).

[40] Judgment of 29 April 2025, *Commission* v *Malta (Citizenship by investment)* (C-181/23, '*Commission* v *Malta*', EU:C:2025:283, paragraph 92). Whereas in that judgment the Court stated that 'Union citizenship *constitutes* the fundamental status of nationals of the Member States', it relied on its earlier case-law, according to which such status was held '*to be destined* to become the fundamental status of nationals of Member States'. Thus, one may conclude that there has been a certain evolution in that regard since the judgment of 20 September 2001, *Grzelczyk* (C-184/99, EU:C:2001:458, paragraph 31), in which the Court stated this for the first time. The Court repeated its formulation from *Grzelczyk* in numerous other cases, including *Ruiz Zambrano* (see paragraph 41). The only case in which 'destined to' or 'intended to' was omitted by the Court, before *Commission* v *Malta*, was in its judgment of 5 September 2023, *Udlændinge- og Integrationsministeriet (Loss of Danish nationality)* (C-689/21, EU:C:2023:626, point 38), Thus, arguably, the change of phrasing in *Commission* v *Malta* was intentional and demonstrates a stronger affirmation of the importance of EU citizenship status. Such an evolution illustrates, in my view, that EU citizenship has attained maturity, which allows its further development.

[41] Some of the other rights that Article 20 TFEU confers on EU citizens, and which are elaborated upon in more detail in Articles 22 to 24 TFEU, also concern mobile citizens. Thus, the right to vote in local or European elections in the Member State of residence is relevant for citizens who live in a Member State other than that of their nationality. The right to diplomatic and consular protection in third countries by representations of Member States other than the Member State of nationality is relevant for citizens who travel to third countries, but not to static or mobile citizens in the sense of free movement rights. The rights to petition the European Parliament, to apply to the European Ombudsman or to write to EU institutions in one's own language are, however, equally relevant to static and mobile citizens.

[42] See footnote 32 to the present Opinion.

68. The majority of rights created by secondary EU law for individuals are not conditional upon their moving to another Member State.

69. Finally, were the Court to interpret the substance of the rights of EU citizens in such a way that those rights encompass the right not to move, would such an interpretation signify a unilateral stretching of the concept of citizenship? I am not of that view.

70. Nationals of the EU Member States had already enjoyed rights of movement, stemming from the internal market, prior to the introduction of EU citizenship status. Those rights pertained to economically active mobile citizens (workers, self-employed persons, jobseekers and students) and encompassed derived rights for some of their family members. The right to move and reside freely as an element of EU citizenship rights, introduced in the Treaties in a novel phase of the EU integration process, must therefore carry an additional significance and meaning. It is clear from the choice of wording – 'citizenship of the Union' – that that concept aims at creating an additional attachment for nationals of the Member States; an attachment which is not only based on the economic logic of the market, but which ties Member State nationals to a wider European society based on common values,[43] without depriving them of their national identity.[44] That attachment exists irrespective of whether an EU citizen moves from or stays in his or her Member State.

71. Thus, even if the possibility of moving to another Member State is an important part of EU citizenship, that status must be interpreted as conferring not only rights on persons who choose to avail themselves of that possibility, but must also protect those who decide not to do so.

72. For all those reasons, in my view, Article 20 TFEU should be construed as protecting the right not to move. In order to protect that right, it does not matter whether a citizen is compelled to move to a third country or to another Member State. In both scenarios, EU citizens risk being deprived of the freedom to choose not to move, thus interfering with their citizenship status. In both situations, such a risk could, therefore, give rise to a derived right of residence for a TCN upon whom an EU citizen is dependent.

73. In the light of the foregoing, I propose that, in reply to the first question put by the referring court, the Court of Justice answer that Article 20 TFEU must be interpreted as meaning that it does not exclude that a TCN parent must be granted a derived right of residence in the Member State of which his or her dependent static minor child is a national, while that parent has a right of residence in another Member State. The EU citizenship right 'to move and reside freely within the territory of the Member States' encompasses the right to choose not to move, rendering the question whether an EU citizen is compelled to move to a third country or to another Member State irrelevant.

[43] See, to that effect, *Commission* v *Malta*, paragraph 95. In the light of that judgment, arguing in favour of introducing a European dimension in education, K. Grimonprez considered that 'the Court's recognition that citizenship is grounded in solidarity and good faith confirms that its relevance extends beyond mobile citizens. Its effects apply also to those who do not cross borders.'Grimonprez, K., 'EU citizenship based on common values: implications of Commission v Malta (C-181/23) for the European dimension in citizenship education (Case Comment)' *E.L. Rev*. 2025, 502-514, at 512.

[44] See, to that effect, judgments of 19 November 2024, *Commission* v *Czech Republic (Ability to stand for election and membership of a political party)* (C-808/21, EU:C:2024:962, paragraph 163), and of 19 November 2024, *Commission* v *Poland (Ability to stand for election and membership of a political party)* (C-814/21, EU:C:2024:963, paragraph 160).

*3. In the alternative*

74. Should the Court find that Article 20 TFEU applies only if an EU citizen is compelled to leave the territory of the European Union as a whole, it is nonetheless necessary that a decision-making authority verify whether that EU citizen may in fact satisfy the conditions for a valid residence permit in another Member State.

75. Even if V does have a right to reside in Spain,[45] that does not resolve the issue of whether the entire family – that is, her minor child and her husband – could also join her in that Member State.

76. The Netherlands authorities appear to have based their assessment solely on the assumption that V's spouse and their son are both EU citizens, without carrying out any specific verification that they could in fact reside legally in Spain.

77. The possibility of the relocation of the entire family cannot simply be assumed. Consequently, before refusing to grant a residence permit to V and ordering her to move to Spain, the Netherlands authorities were obliged to verify for themselves that family relocation was legally possible.

78. If that were not so, V, faced with the order to leave the Netherlands, would have to return with her child to the third country of her origin. On account of his dependency on his mother, which was not disputed by any of the parties to the main proceedings, V's child, an EU citizen, would be thus compelled to leave the territory of the European Union as a whole. That would trigger the application of Article 20 TFEU pursuant to the Court's reasoning in *Ruiz Zambrano* and its progeny, resulting in the obligation, on the part of the Netherlands authorities, to recognise V's derived right of residence.[46]

79. Could V's child and her husband relocate to Spain?

80. As EU citizens, both V's spouse and their child enjoy the right to move to Spain and to reside there for up to three months (Articles 5 and 6 of the Citizenship Directive).

81. Beyond those three months, Article 7 of the Citizenship Directive imposes certain conditions.

82. V's spouse and their child may reside in Spain provided that they are workers or self-employed (Article 7(1)(a)); self-sufficient (Article 7(1)(b)); or following a course of study, having at the same time sufficient resources and comprehensive sickness insurance (Article 7(1)(c)). V's son is a child and it is not likely that he fulfils any of those conditions.[47] V's husband receives social benefits and is partly exempt from work owing to his medical condition, so it is also unlikely that he might fall within one of those situations.

[45] The referring court will have to verify whether V does indeed enjoy a right of residence in Spain. V explained that she tried to renounce that right, but it is not certain whether that was possible. I will proceed with the analysis on the premiss, as stated in the order for reference, that V can indeed reside legally in Spain.

[46] I would add that it should not be overlooked that although both parents appear to have the nationality of a third country, that is not the case for their son, so his relocation to and residence in that third country could nonetheless be subject to additional requirements.

[47] However, on the basis of *Zhu and Chen*, one can argue that V's son could move to Spain if his mother has sufficient resources to support him in that Member State.

83. Under Article 7(1)(d) of the Citizenship Directive, an EU citizen may be idle and yet reside in another Member State if (s)he is joining another EU citizen. However, that is not the case here as V is a TCN.

84. As a result, subject to verification by the referring court, the possibility of residing in Spain under EU law does not appear to be a legally viable option for V and her family.

85. In any case, the Netherlands authorities should not have refused a right of residence to V before ascertaining whether her child and her husband could indeed have accompanied her to Spain under EU law.

### *B. The second question*

86. By its second question, the referring court in essence wishes to know when, in the process of deciding whether to grant a derived right of residence to a TCN parent, a decision-making authority must take into consideration the best interests of the child and the right to family life. In particular, that court wishes to know whether a decision requiring that a TCN parent, on the basis of Article 6(2) of Directive 2008/115, leave immediately and move to another Member State in which he or she enjoys a right of residence, can be adopted without assessing the best interests of the child and his or her right to family life.

#### *1. A high degree of dependency as a threshold for relying on Article 20 TFEU as the source of a derived right of residence*

87. In the case-law, the assessment of the interference with the right to family life and the best interests of the child is closely connected to establishing a degree of dependency that, if sufficient, may confer a derived right of residence on a TCN parent under Article 20 TFEU.

88. A high degree of dependency was established by the Court as a threshold for conferring a derived right of residence in situations in which such dependency would otherwise require the EU citizen to leave the territory of the European Union as a whole. In the same way and for the same reason that *the right to reside within the territory of the European Union* can trump national immigration-related measures only in 'very specific situations',[48] the *right not to move* is, at this current period of development of EU integration, also protected only in those cases in which there is a sufficient degree of dependency between the EU citizen and the TCN.

89. It follows from the case-law of the Court that Article 20 TFEU cannot be relied upon against national measures if they merely *interfere* with the choice not to move. The threshold for conferring a derived right of residence is rather *a deprivation* of that choice, which exists only in a situation where a national measure *de facto compels* an EU citizen to move.

90. As I understand it, the rationale for such a limitation lies in the interference of EU citizenship-based rights with the Member States' prerogatives in the area of immigration policy. Once Article 20 TFEU is applicable, it can trump national measures, including the denial of a residence permit to a TCN. It is therefore necessary to balance those two interests carefully.

[48] The wording used by the Court in the majority of cases relating to a derived right of residence based on Article 20 TFEU. See, for example, *NW and PQ*, paragraph 60 and the case-law cited.

91. In that light, requiring a high degree of dependency might be seen as serving to limit the scope of situations in which a derived right of residence may be granted to a TCN under Article 20 TFEU.

*2. Dependency and the best interests of the child*

92. According to the case-law, a deprivation of citizenship rights exists only if the EU citizen would *actually*, or *in practice*,[49] have to leave with the TCN.

93. The Court does not consider that that is the case where the dependency is of a lesser degree.

94. For example, in *Dereci*, the Court held that 'the mere fact that it might appear desirable to a national of a Member State, for economic reasons or in order to keep his family together in the territory of the Union, for the members of his family who do not have the nationality of a Member State to be able to reside with him in the territory of the Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave Union territory if such a right is not granted.'[50]

95. Thus, the mere desirability of family life is not sufficient.[51] For example, in most cases before the Court in which an adult EU citizen would have been required to leave his or her Member State if he or she wished to continue a family life with a TCN, the Court did not consider that Article 20 TFEU conferred a derived right of residence. Thus, it seems that the Court is willing to accept that 'an adult is, as a general rule, capable of living an independent existence apart from the members of his or her family'.[52]

96. However, the situation is different where minor EU citizens are concerned.[53]

97. While assessing the dependency of a child who is an EU citizen on his or her TCN family member, usually a parent, the competent authorities must take into account not only that child's right to respect for family life, as enshrined in Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), but also the best interests of that child, as protected by Article 24(2) thereof.[54]

98. When assessing the degree of dependency, national decision-making authorities must comprehensively evaluate all specific circumstances in *each individual case*.[55]

[49] For example, *Chavez-Vilchez*, paragraph 63.

[50] *Dereci*, paragraph 68.

[51] See also *McCarthy* paragraphs 49 and 50, or *Ymeraga*, paragraphs 38, 39 and 43.

[52] See, for example, 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 40).

[53] See, to that effect, *Subdelegación del Gobierno en Toledo*, paragraph 56 and the case-law cited.

[54] *Chavez-Vilchez*, paragraph 70.

[55] See, to that effect, *Rendón Marín* (paragraph 85); *Subdelegación del Gobierno en Toledo* (paragraph 53 and the case-law cited); and judgment of 25 April 2024, *NW and PQ (Classified information)* (C-420/22 and C-528/22, EU:C:2024:344, paragraph 77).

99. They must take into consideration the child's age and physical and emotional development, the extent of the child's emotional ties to a TCN parent and the risks which separating that child from that parent might entail for the child's equilibrium. [56]

100. If, on the basis of a detailed assessment of the relationship between the dependent child who is an EU citizen and his or her TCN parent, the competent authorities examining the parent's request for a residence permit conclude that the child would be compelled to leave the Member State with that parent were the application to be refused, that authority must acknowledge a sufficient degree of dependency, and grant a derived right of residence under Article 20 TFEU.

101. That consequentialist approach, which requires an examination of the Charter in order to establish whether Article 20 TFEU is applicable, has been criticised. [57] However, issues with that approach may be overcome by drawing a distinction between the applicability of Article 20 TFEU and its application in a particular case as a ground for granting a derived right of residence.

102. The applicability of Article 20 TFEU in internal situations depends solely on the fact that a person is a national of a Member State.

103. That follows clearly from the case-law. For example, in *X (Thai mother)*, [58] when deciding on the applicability of Article 20 TFEU, the Court stated: '*the benefit of the derived right of residence flowing from Article 20 TFEU depended not on the exercise by that child of his or her right of free movement and residence within the European Union, but on his or her citizenship of the Union*, a status that he or she enjoyed irrespective of the exercise of that right, by virtue of the sole fact of possessing the nationality of a Member State'. [59]

104. Thus, a situation falls within the scope of Article 20 TFEU by the mere fact that a person is a national of a Member State, even if that person has never left his or her home State. That allows for the application of the Charter in conformity with Article 51(1) thereof, according to which the rights enshrined in that instrument apply to the Member States only when they are implementing EU law. [60]

105. As has been observed, the application of Article 20 TFEU with a view to granting a derived right of residence in a particular case depends on the degree of dependency between the EU citizen and the TCN, for the assessment of which the decision-making authority must take into consideration Charter rights, primarily the best interests of the child and the right to family life.

106. That partly answers the second question of the referring court. The rights contained in Articles 7 and 24 of the Charter are relevant for assessing whether an EU citizen would be compelled to accompany his or her TCN parent, who is required to leave.

[56] See, to that effect, *Chavez-Vilchez*, paragraph 71. See also, to that effect, inter alia, judgments of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C-82/16, EU:C:2018:308, paragraph 72); and 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, paragraphs 38 and 39); and *X (Thai mother)* (paragraph 48).

[57] See, for example, Šadl, U., 'Case – Case-Law – Law: *Ruiz Zambrano* as an Illustration of How the Court of Justice of the European Union Constructs Its Legal Arguments', *EuConst*, 2013, pp. 205 to 229, at p. 225.

[58] The circumstances of that case were such that the minor EU citizen at issue, on the basis of whose citizenship rights his TCN mother sought to have a derived right of residence recognised in the Netherlands, lived his entire life in a third country.

[59] *X (Thai mother)*, paragraph 29 (emphasis added).

[60] See, to that effect, judgment of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105).

107. Thus, if the degree of dependency is such that the minor EU citizen would be compelled to leave, the competent authorities must grant his or her TCN parent a derived right of residence in order to protect the substance of the citizenship rights of the minor EU citizen, which encompasses the right not to move.

108. If the Court accepts my proposal that EU citizenship rights encompass not only the right to reside on the territory of the European Union, but also the right to choose not to move, the fact that the family might be compelled to move to another Member State, and not outside the territory of the European Union as a whole, is sufficient to recognise the existence of a derived right of residence under Article 20 TFEU.

109. If, on the contrary, the Court does not accept that proposed interpretation of the substance of citizenship rights, but confines the application of Article 20 TFEU to situations in which an EU citizen is compelled to leave the territory of the European Union as a whole, the decision-making authority would nonetheless have an obligation to verify whether the family can indeed move and continue family life in Spain, without such a move infringing the best interests of the child and his right to family life.

110. Even if a minor EU citizen would be compelled, on account of his or her dependency on a TCN, to leave a Member State with that TCN, where the latter is denied a right of residence, a Member State may justify refusing an application for a derived right of residence under Article 20 TFEU on other grounds. It may, for example, rely on grounds such as public policy or public security in order to reject such an application.[61] In assessing the proportionality of relying on such grounds in order to refuse an application under Article 20 TFEU, the decision-making authority would still have to consider the best interests of the child and the right to family life.

111. However, the present case as presented to the Court does not raise the question of a possible justification for the national authorities' refusal of a residence permit. It would appear that the competent authorities refused to grant a right of residence to V on the basis that Article 20 TFEU did not apply, without therefore trying to justify its refusal on any other ground.

112. Finally, the complete answer to the second question of the referring court also requires that the Court clarify that the competent authorities cannot adopt a decision based on Article 6(2) of Directive 2008/115 without establishing whether the best interests of the child and his or her right to family life would require that a derived right of residence be granted, and whether those rights may be limited on other legitimate grounds.

113. I therefore propose that the Court answer the second question of the referring court as follows: Article 20 TFEU must be interpreted as requiring the competent authorities, when assessing whether to grant a derived right of residence to a TCN parent of a dependent minor EU citizen, to verify, by taking into consideration the best interests of the child and the right to family life, whether the degree of dependency between that minor and that parent is such that the former would be compelled to accompany that parent, were said parent to be denied a right of residence. The best interests of the child and his or her right to family life must be assessed before adopting a decision, based on Article 6(2) of Directive 2008/115, requiring a TCN to leave and move to another Member State in which he or she enjoys a right of residence.

[61] See, for example, *CS*.

### *C. Application to the facts of the present case*

114. Article 20 TFEU applies in the present case since V's child is an EU citizen.

115. In order to make a decision as to V's derived right of residence, the competent authorities must assess whether the child, who is an EU citizen, and his TCN mother, who applied for a residence permit, have a relationship of dependency such that the child would be compelled to leave the territory of the Netherlands were his mother ordered to leave.

116. On the basis of the order for reference, it is apparent that V is the child's primary carer, as his father is not capable of regular work and receives social benefits for that reason. [62] It also appears that there is a high level of dependency between the child and his mother. It is, accordingly, in the best interests of the child that he stay with his mother.

117. The child would therefore be compelled to leave the Netherlands with his mother if she were denied a right of residence in that Member State. That fact does not appear to be disputed and appears consistent with the conclusion of the competent Netherlands authorities.

118. If the child's mother is required to leave the Netherlands, and the child is therefore compelled to accompany her on account of their dependent relationship, given that Article 20 TFEU confers a right not to move on EU citizens, the question whether she and her son would have to move to Spain or to a third country becomes irrelevant.

119. If it is in the best interests of the child to exercise his right not to move, the Netherlands authorities must grant his TCN mother a derived right of residence.

120. Additionally, in the specific circumstances of the present case, remaining in the Netherlands seems to be in the best interests of that child. His citizenship right not to move would thus only be protected if his mother is granted a derived right of residence.

## IV. Conclusion

121. In the light of the foregoing, I propose that the Court of Justice answer the questions referred by the rechtbank Den Haag (District Court, The Hague, Netherlands) as follows:

(1) Article 20 TFEU must be interpreted as meaning that it does not exclude that a third-country parent must be granted a derived right of residence in the Member State of which his or her dependent static minor child is a national, while that parent has a right of residence in another Member State. The EU citizenship right 'to move and reside freely within the territory of the Member States' encompasses the right to choose not to move, rendering the question whether an EU citizen is compelled to move to a third country or to another Member State irrelevant.

[62] The Court explained that, when the EU citizen in question is a child, the competent authorities must establish who the primary carer for that child is and whether there is in fact a relationship of dependency between the child and the TCN parent (*Chavez-Vilchez*, paragraph 70). Furthermore, even if the dependency exists with both parents, of which one is a TCN and the other is an EU citizen, the mere existence and involvement of that EU citizen parent in the child's life is not, in itself, sufficient to refuse a derived right of residence to a TCN parent if the child is genuinely dependent on the latter parent.

(2) Article 20 TFEU must be interpreted as requiring the competent authorities, when assessing whether to grant a derived right of residence to a third-country national parent of a dependent minor EU citizen, to verify, by taking into consideration the best interests of the child and the right to family life, whether the degree of dependency between that minor and that parent is such that the former would be compelled to accompany that parent, were said parent to be denied a right of residence. The best interests of the child and his or her right to family life must be assessed before adopting a decision, based on Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, requiring a third-country national to leave and move to another Member State in which he or she enjoys a right of residence.