



[Pagina iniziale](#) > [Formulario di ricerca](#) > [Elenco dei risultati](#) > [Documenti](#)



[Avvia la stampa](#)

Lingua del documento :

ECLI:EU:C:2016:674

JUDGMENT OF THE COURT (Grand Chamber)

13 September 2016 (*)

(Reference for a preliminary ruling — Citizenship of the Union — Article 20 TFEU — Third-country national having a young dependent child who is a Union citizen — Right to reside in the Member State of which the child is a national — Criminal convictions of the child's parent — Decision to expel the parent resulting in the indirect expulsion of the child concerned)

In Case C-304/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom), made by decision of 4 June 2014, received at the Court on 24 June 2014, in the proceedings

Secretary of State for the Home Department

v

CS,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, C. Toader, D. Šváby, F. Biltgen and C. Lycourgos, Presidents of Chambers, A. Rosas (Rapporteur), E. Juhász, A. Borg Barthet, M. Safjan, M. Berger, A. Prechal and K. Jürimäe, Judges,

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 30 June 2015,

after considering the observations submitted on behalf of:

- CS, by R. Husain QC and L. Dubinsky and P. Tridimas, Barristers, instructed by D. Furner, Solicitor,
- the United Kingdom Government, by M. Holt and J. Beeko, acting as Agents, and D. Blundell, Barrister,
- the Danish Government, by C. Thorning and M. Wolff, acting as Agents,
- the French Government, by D. Colas and R. Coesme, acting as Agents,
- the Polish Government, by B. Majczyna, K. Pawłowska and M. Pawlicka, acting as Agents,
- the European Commission, by I. Martínez del Peral, C. Tufvesson and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 February 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 20 TFEU.

2 The request has been made in proceedings between CS — a third-country national and the mother of a young child who is a Union citizen possessing the nationality of a Member State in which he has always resided — and the Secretary of State for the Home Department (‘the Home Secretary’) concerning a deportation order expelling CS from the territory of the United Kingdom to a third country because of her criminal record.

Legal context

EU law

3 Article 3 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 at OJ 2004 L 229, p. 35, OJ 2005 L 30, p. 27, and OJ 2005 L 197, p. 34), headed ‘Beneficiaries’, provides:

‘1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence ...

...

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.’

United Kingdom law

The Borders Act

4 Under section 32(5) of the UK Borders Act 2007 (‘the Borders Act’), where a person who is not a British citizen is convicted in the United Kingdom of an offence and is sentenced to a period of imprisonment of at least 12 months, the Home Secretary must make a deportation order in respect of him.

5 It is apparent from section 33 of the Borders Act that that obligation is excluded where the removal of the convicted person in pursuance of the deportation order would:

(a) breach a person’s rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 May 1950;

(b) breach the United Kingdom’s obligations under the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (United Nations Treaty Series, vol. 189, p. 150, No 2545 (1954)); or

(c) breach rights of the offender under the EU Treaties.

The Immigration Regulations

6 Under regulation 15A(4A) of the Immigration (European Economic Area) Regulations 2006, in the version as amended in 2012 (‘the Immigration Regulations’), which takes account of the judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124), a person who satisfies the criteria in regulation 15A(4A) is entitled to a ‘derivative right to reside in the United Kingdom’.

7 However, in accordance with regulation 15A(9) of the Immigration Regulations, a person who would otherwise be entitled to a derivative right of residence under, inter alia, regulation 15A(4A) is not entitled to that right ‘where the [Home Secretary] has made a decision under regulation 19(3)(b), 20(1) or 20A(1)’.

8 By virtue of regulation 20(1) of the Immigration Regulations, the Home Secretary may refuse to issue, revoke or refuse to renew a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card ‘if the refusal or revocation is justified on grounds of public policy, public security or public health’.

9 Under regulation 20(6) of the Immigration Regulations, such a decision must be taken in accordance with regulation 21.

10 Regulation 21A of the Immigration Regulations applies a modified version of Part 4 of the Immigration Regulations to decisions taken in relation, in particular, to derivative rights of residence. Regulation 21A(3)(a) applies Part 4 as if ‘references to a matter being “justified on grounds of public policy, public security or public health in accordance with regulation 21” referred instead to a matter being “conducive to the public good”’.

11 It follows from those provisions that it is possible to refuse to grant a derived (or ‘derivative’) right of residence to a person who could otherwise claim a right of residence under Article 20 TFEU, as interpreted by the Court in its judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124), where that is conducive to the public good.

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

12 CS, a third-country national, married a British citizen in 2002. In September 2003 she was granted a visa on the basis of her marriage and entered the United Kingdom lawfully, with leave to remain until 20 August 2005. On 31 October 2005, she was granted indefinite leave to remain in the United Kingdom.

13 In 2011 a child of the marriage was born, in the United Kingdom. CS is said to be the sole carer of the child, who is a British citizen.

14 On 21 March 2012, CS was convicted of a criminal offence. On 4 May 2012, she was sentenced to a term of imprisonment of 12 months.

15 On 2 August 2012, CS was notified that by reason of her conviction she was liable to be deported from the United Kingdom. On 30 August 2012, she applied for asylum in the United Kingdom. That application was considered by the appropriate national authority, namely the Home Secretary.

16 On 2 November 2012, CS was released after completing her period of imprisonment and on 9 January 2013 the Home Secretary rejected her application for asylum. The order deporting CS from the United Kingdom to a third country was made

under section 32(5) of the Borders Act. CS challenged the order by exercising her right of appeal to the First-tier Tribunal (Immigration and Asylum Chamber) (United Kingdom). On 3 September 2013, her appeal was allowed on the ground that her deportation would lead to a breach of the Convention relating to the Status of Refugees, of Articles 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and of the Treaties.

17 In its decision, the First-tier Tribunal (Immigration and Asylum Chamber) found that, if a measure deporting CS were adopted, no other family member could care for her child in the United Kingdom, so that he would have to follow her to her State of origin. Referring to the rights of CS's child that are linked to his Union citizenship, under Article 20 TFEU as interpreted by the Court in the judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124), it held that 'a citizen of the EU simply cannot be constructively expelled from the territory of the EU in any circumstances whatsoever ... [that that] obligation permits of no derogation at all, including where ... the parents had a criminal history ... [and that] the deportation order in this case is therefore not in accordance with the law because it violates the child's rights under Article 20 TFEU'.

18 The Home Secretary was granted permission to appeal to the Upper Tribunal (Immigration and Asylum Chamber). She argued that the First-tier Tribunal (Immigration and Asylum Chamber) erred in law in allowing CS's appeal, in particular as regards its assessment relating to the rights of CS's child under Article 20 TFEU, to the judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124), and to CS's derived rights. The Home Secretary submitted in particular that EU law does not preclude CS being deported to her State of origin even if to do so would deprive her child, a Union citizen, of the genuine enjoyment of the substance of the rights attaching to that status.

19 It was in those circumstances that the Upper Tribunal (Immigration and Asylum Chamber) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Does EU law, and in particular Article 20 TFEU, preclude a Member State from expelling from its territory to a non-Union country a non-Union national who is the parent and primary carer of a child who is a citizen of that Member State (and, consequently, a citizen of the Union), where to do so would deprive the Union citizen child of the genuine enjoyment of the substance of his or her rights as a European Union citizen?

2. If the answer to Question 1 is "No", in what circumstances would such an expulsion be permitted under EU law?

3. If the answer to Question 1 is "No", to what extent, if any, do Articles 27 and 28 of Directive [2004/38] inform the answer to Question 2?'

Consideration of the questions referred

20 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 20 TFEU must be interpreted as precluding legislation of a Member State which requires a third-country national who has been convicted of a criminal offence of a certain gravity to be expelled from the territory of that Member State to a third country notwithstanding the fact that that national is the primary carer of a young child who is a national of that Member State, in which he has been residing since birth without having exercised his right of freedom of movement, when the envisaged expulsion would require the child to leave the territory of the European Union, thereby depriving him of the genuine enjoyment of the substance of his rights as a Union citizen.

The provisions of EU law relating to citizenship of the Union

21 First, Article 3 of Directive 2004/38, headed ‘Beneficiaries’, provides in paragraph 1 that the directive is to apply to all Union citizens who ‘move to or reside in a Member State other than that of which they are a national, and to their family members’.

22 It follows that Directive 2004/38 is not applicable to a situation such as that at issue in the main proceedings, as the Union citizen concerned has never made use of his right of freedom of movement and has always resided in the Member State of which he is a national (see judgment of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraph 39). In so far as a Union citizen is not covered by the concept of ‘beneficiary’ for the purposes of Article 3(1) of Directive 2004/38, a member of his family is not covered by that concept either, given that the rights conferred by that directive on the family members of a beneficiary of the directive are not autonomous rights of those family members, but derived rights, acquired through their status as members of the beneficiary’s family (see judgments of 5 May 2011, *McCarthy*, C-434/09, EU:C:2011:277, paragraph 42; of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 55; and of 8 May 2013, *Ymeraga and Others*, C-87/12, EU:C:2013:291, paragraph 31).

23 So far as concerns, secondly, Article 20 TFEU, the Court has already had occasion to hold that the situation of a Union citizen who, like CS’s child of British nationality, has not made use of the right of freedom of movement cannot, for that reason alone, be assimilated to a purely internal situation, that is to say, a situation which has no factor linking it with any of the situations governed by EU law (see judgments of 5 May 2011, *McCarthy*, C-434/09, EU:C:2011:277, paragraph 46; of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 61; and of 6 December 2012, *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 43).

24 CS’s child, as a national of a Member State, enjoys, under Article 20(1) TFEU, the status of Union citizen, which is intended to be the fundamental status of nationals of the Member States, and may therefore rely on the rights pertaining to that status, including against the Member State of which he is a national (see judgments of 5 May 2011, *McCarthy*, C-434/09, EU:C:2011:277, paragraph 48; of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 63; and of 6 December 2012, *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 44).

25 Citizenship of the Union confers on each Union citizen a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and restrictions laid down by the Treaty and the measures adopted for their implementation (see, to this effect, judgments of 7 October 2010, *Lassal*, C-162/09, EU:C:2010:592, paragraph 29, and of 16 October 2012, *Hungary v Slovakia*, C-364/10, EU:C:2012:630, paragraph 43).

26 As the Court held in paragraph 42 of the judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124), 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.

27 On the other hand, the Treaty provisions on citizenship of the Union do not confer any autonomous right on third-country nationals (judgments of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraph 66, and of 8 May 2013, *Ymeraga and Others*, C-87/12, EU:C:2013:291, paragraph 34).

28 Any rights conferred on third-country nationals by the Treaty provisions on citizenship of the Union are not autonomous rights of those nationals but rights derived from those enjoyed by the 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 the Union citizen's freedom of movement (judgments of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraphs 67 and 68, and of 8 May 2013, *Ymeraga and Others*, C-87/12, EU:C:2013:291, paragraph 35).

29 In this connection, the Court has already held that there are very specific situations in which, despite the fact that the secondary law on the right of residence of third-country nationals does not apply and the Union citizen concerned has not made use of his freedom of movement, a right of residence must nevertheless be granted to a third-country national who is a family member of his since the effectiveness of citizenship of the Union 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 denying him the genuine enjoyment of the substance of the rights conferred by virtue of his status (see, to this effect, judgments of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraphs 43 and 44; of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraphs 66 and 67; of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraph 71; of 8 May 2013, *Ymeraga and Others*, C-87/12, EU:C:2013:291, paragraph 36; and of 10 October 2013, *Alokpa and Moudoulou*, C-86/12, EU:C:2013:645, paragraph 32).

30 The above situations have the common feature that, although they are governed by legislation which falls, a priori, within the competence of the Member States, namely legislation on the right of entry and residence of third-country nationals outside the scope of provisions of secondary legislation which provide for the grant of such a right under certain conditions, they nonetheless have an intrinsic connection with the freedom of movement and residence of a Union citizen, which prevents the right of entry and

residence being refused to those nationals in the Member State of residence of that citizen, in order not to interfere with that freedom (see, to this effect, judgments of 8 November 2012, *Ida*, C-40/11, EU:C:2012:691, paragraph 72, and of 8 May 2013, *Ymeraga and Others*, C-87/12, EU:C:2013:291, paragraph 37).

31 In the present instance, CS's child has the right, as a Union citizen, to move and reside freely within the territory of the European Union, and any limitation of that right falls within the scope of EU law.

32 The expulsion of that child's mother, who is his primary carer, could result in a restriction of the rights conferred by the status of Union citizen, as he may be compelled, *de facto*, to go with her, and therefore to leave the territory of the European Union as a whole. In this sense, the expulsion of the child's mother would deprive the child of the genuine enjoyment of the substance of the rights which the status of Union citizen nevertheless confers upon him.

33 Consequently, the situation at issue in the main proceedings could result, for CS's child, in his being deprived of the genuine enjoyment of the substance of the rights which his status of Union citizen confers upon him, and therefore falls within the scope of EU law.

The possibility of limiting a derived right of residence flowing from Article 20 TFEU

34 The United Kingdom Government contends that the commission of a criminal offence can take a case outside the scope of the principle established by the Court in the judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124). If, however, the Court were to hold that that principle is applicable in a situation such as that at issue in the main proceedings, it is capable of limitation. In this connection, the United Kingdom Government submits that the decision to deport CS on account of her criminal conduct of a certain gravity corresponds to a public policy ground, since that conduct represents a clear threat to a legitimate interest of the United Kingdom, namely the preservation of social cohesion and respect for its societal values. It has noted that, in this instance, the Court of Appeal (England and Wales) (Criminal Division), in the decision dismissing CS's appeal against her sentence to a term of imprisonment, recognised the seriousness of the offence committed by her.

35 In that context, the United Kingdom Government observes that Articles 27 and 28 of Directive 2004/38 set out a framework governing the Member States' ability to expel a Union citizen from their territory, in particular when he has committed a criminal offence. Failure to recognise the possibility of limiting a derived right of residence flowing directly from Article 20 TFEU and of adopting an expulsion measure would mean that a Member State would be unable to expel a third-country national who is guilty of such an offence if he is the parent of a child who is a Union citizen resident in the Member State of which he is a national. Accordingly, the degree of protection from expulsion from that Member State's territory would be greater for a third-country national who has a derived right of residence than for a Union citizen. In the United Kingdom Government's

submission, therefore, a Member State must be entitled to derogate from the derived right of residence flowing from Article 20 TFEU and to expel such a third-country national from its territory if a criminal offence of a certain gravity has been committed, even where this means that the child in question will have to leave the territory of the European Union, provided that such a decision is proportionate and respects fundamental rights.

36 It should be pointed out that Article 20 TFEU does not affect the possibility of Member States relying on an exception linked, in particular, to upholding the requirements of public policy and safeguarding public security. However, since CS's situation falls within the scope of EU law, assessment of her situation must take account of the right to respect for private and family life, as laid down in Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), an article which must be read in conjunction with the obligation to take into consideration the child's best interests, recognised in Article 24(2) of the Charter (see, to this effect, judgment of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraphs 53 and 54).

37 Furthermore, it should be borne in mind that, as a justification for derogating from the right of residence of Union citizens or members of their families, the concepts of 'public policy' and 'public security' must be interpreted strictly, so that their scope cannot be determined unilaterally by the Member States without being subject to control by the EU institutions (see, to this effect, judgments of 4 December 1974, *van Duyn*, 41/74, EU:C:1974:133, paragraph 18; of 27 October 1977, *Bouchereau*, 30/77, EU:C:1977:172, paragraph 33; of 29 April 2004, *Orfanopoulos and Oliveri*, C-482/01 and C-493/01, EU:C:2004:262, paragraphs 64 and 65; of 27 April 2006, *Commission v Germany*, C-441/02, EU:C:2006:253, paragraph 34; and of 7 June 2007, *Commission v Netherlands*, C-50/06, EU:C:2007:325, paragraph 42).

38 The Court has thus held that the concept of 'public policy' presupposes, in any event, the existence, in addition to the disturbance of the social order which any infringement of the law involves, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

39 As regards 'public security', it is apparent from the Court's case-law that this concept covers both the internal security of a Member State and its external security and that, consequently, a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security (see, to this effect, judgments of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraphs 43 and 44, and of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraphs 65 and 66). The Court has also held that the fight against crime in connection with drug trafficking as part of an organised group (see, to this effect, judgment of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraphs 45 and 46) or against terrorism (see, to this effect, judgment of 26 November 2002, *Oteiza Olazabal*, C-100/01, EU:C:2002:712, paragraphs 12 and 35) is included within the concept of 'public security'.

40 In this context, it must be held that, where the expulsion decision is founded on the existence of a genuine, present and sufficiently serious threat to the requirements of public policy or of public security, in view of the criminal offences committed by a third-country national who is the sole carer of children who are Union citizens, that decision could be consistent with EU law.

41 On the other hand, that conclusion cannot be drawn automatically on the basis solely of the criminal record of the person concerned. It can result, where appropriate, only from a specific assessment by the national court of all the current and relevant circumstances of the case, in the light of the principle of proportionality, of the child's best interests and of the fundamental rights whose observance the Court ensures.

42 That assessment must therefore take account in particular of the personal conduct of the individual concerned, the length and legality of his residence on the territory of the Member State concerned, the nature and gravity of the offence committed, the extent to which the person concerned is currently a danger to society, the age of the child at issue and his state of health, as well as his economic and family situation.

43 In the present instance, the referring court indicates that, under the national legislation at issue in the main proceedings, the Home Secretary is obliged to make a deportation order in respect of a national of a State other than the United Kingdom who is convicted of an offence and sentenced to a period of imprisonment of at least 12 months, unless that order 'breach[es] the rights of the convicted offender under the EU Treaties'.

44 That legislation therefore seems to establish a systematic and automatic link between the criminal conviction of the person concerned and the expulsion measure applicable to him or, in any event, there is a presumption that the person concerned must be expelled from the United Kingdom.

45 However, as is clear from paragraphs 40 to 42 of the present judgment, the mere existence of a criminal record cannot, by itself, justify an expulsion decision which may deprive CS's child of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen.

46 In the light of the considerations set out in paragraph 40 of the present judgment, the referring court, first of all, has the task of examining what, in CS's conduct or the offence that she committed, constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or of the host Member State, which may justify, on the ground of protecting the requirements of public policy or public security, an order deporting her from the United Kingdom.

47 It is incumbent in this respect upon the referring court to assess (i) the extent to which CS's criminal conduct is a danger to society and (ii) any consequences which such conduct might have for the requirements of public policy or public security of the Member State concerned.

48 In carrying out the balancing exercise required of it, the referring court has also to take account of the fundamental rights whose observance the Court ensures, in particular the right to respect for private and family life, as laid down in Article 7 of the Charter (see, to this effect, judgment of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraph 52), and to ensure that the principle of proportionality is observed.

49 In the present instance, account is to be taken of the child's best interests when weighing up the interests involved. Particular attention must be paid to his age, his situation in the Member State concerned and the extent to which he is dependent on the parent (see, to this effect, ECtHR, 3 October 2014, *Jeunesse v. the Netherlands*, CE:ECHR:2014:1003JUD001273810, § 118).

50 In the light of all the foregoing considerations, the answer to the questions referred is that Article 20 TFEU must be interpreted as precluding legislation of a Member State which requires a third-country national who has been convicted of a criminal offence to be expelled from the territory of that Member State to a third country notwithstanding the fact that that national is the primary carer of a young child who is a national of that Member State, in which he has been residing since birth without having exercised his right of freedom of movement, when the expulsion of the person concerned would require the child to leave the territory of the European Union, thereby depriving him of the genuine enjoyment of the substance of his rights as a Union citizen. However, in exceptional circumstances a Member State may adopt an expulsion measure provided that it is founded on the personal conduct of that third-country national, which must constitute a genuine, present and sufficiently serious threat adversely affecting one of the fundamental interests of the society of that Member State, and that it is based on consideration of the various interests involved, matters which are for the national court to determine.

Costs

51 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 (Grand Chamber) hereby rules:

Article 20 TFEU must be interpreted as precluding legislation of a Member State which requires a third-country national who has been convicted of a criminal offence to be expelled from the territory of that Member State to a third country notwithstanding the fact that that national is the primary carer of a young child who is a national of that Member State, in which he has been residing since birth without having exercised his right of freedom of movement, when the expulsion of the person concerned would require the child to leave the territory of the European Union, thereby depriving him of the genuine enjoyment of the substance of his

rights as a Union citizen. However, in exceptional circumstances a Member State may adopt an expulsion measure provided that it is founded on the personal conduct of that third-country national, which must constitute a genuine, present and sufficiently serious threat adversely affecting one of the fundamental interests of the society of that Member State, and that it is based on consideration of the various interests involved, matters which are for the national court to determine.

[Signatures]

* Language of the case: English.
