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Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

8 May 2025 (*)

(Reference for a preliminary ruling – Citizenship of the Union – Article 20 TFEU – Right to move and reside freely in the territory of the Member States – Derived right of residence of a third-country national who has a dependent minor child with status of citizen of the Union – Relationship of dependency – Nature of a derived right of residence – Point at which the derived right of residence arises – Obligation to obtain a visa subsequently in a third country)

In Case C130/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Düsseldorf (Administrative Court, Düsseldorf, Germany), made by decision of 16 January 2024, received at the Court on 16 February 2024, in the proceedings

YC

v

Stadt Wuppertal,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, E. Regan (Rapporteur) and J. Passer, Judges,

Advocate General: R. Norkus,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

– the Danish Government, by D. Elkan, M. Jespersen and C. Maertens, acting as Agents,

– the Greek Government, by T. Papadopoulou, acting as Agent,

– the Netherlands Government, by M.K. Bulterman and A. Hanje, acting as Agents,

– the European Commission, by E. Montaguti and J. Vondung, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

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 YC, a third-country national, and Stadt Wuppertal (City of Wuppertal, Germany) concerning the issue of a residence permit for the purposes of family reunification.

Legal context

3 Paragraph 5 of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet – Aufenthaltsgesetz (Law on the residence, occupational activity and integration of foreign nationals in the Federal territory) of 30 July 2004 (BGBl. 2004 I, p. 1950), in the version applicable to the facts in the main proceedings ('the AufenthG'), entitled 'General conditions of issue', provides:

'(1) A residence permit shall in general be issued on condition that:

…

2. there is no interest in expulsion,

…

(2) The issue of a residence permit, an EU Blue Card, an Intra-Corporate Transfer (ICT) Card, a permanent settlement permit or an EU long-term residence permit is also subject to the conditions that the foreign national

1. entered with the required visa and

2. has already provided, in his or her visa application, the relevant information for the issue of a [residence permit].

It is possible to derogate from the conditions set out in the first sentence where the conditions for the issue of a residence permit are satisfied or where, having regard to the particular circumstances of the case, it is unreasonable to carry out the procedure for the grant of a visa subsequently. …'

4 Paragraph 28 of the AufenthG, entitled 'Family reunification with German nationals', provides in subparagraph 1 thereof:

'A residence permit is to be issued

…

3. to the foreign parent of a German national who is an unmarried minor for the exercise of parental responsibility in that regard,

provided that the German national has his or her habitual residence in the Federal territory. It must be issued, by way of derogation from point 1 of Paragraph 5(1), in the cases referred to in points 2 and 3 of the

first sentence. It should be issued, as a general rule, by way of derogation from point 1 of Paragraph 5(1), in the cases referred to in point 1 of the first sentence.'

5 Paragraph 95 of the AufenthG, entitled 'Criminal provisions', states, in subparagraph 1 thereof:

'Any person who

…

2. resides in Federal territory without a residence permit as required in accordance with the first sentence of Paragraph 4(1), where

(a) he or she is subject to an enforceable obligation to leave the territory,

(b) he or she has been given no time limit for departure or that time limit has expired, and

(c) his or her expulsion has not been stayed,

shall be liable to a custodial sentence of up to one year or a fine.

…'

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

6 On 25 September 2019, the external representation of the Republic of Poland in a third country issued the applicant in the main proceedings with a long-stay visa for study purposes, valid until 23 September 2020.

7 On 28 September 2019, the applicant in the main proceedings, entered the Schengen area with that visa and started studying in Poland.

8 After entering Germany from Poland, the applicant in the main proceedings, on 1 August 2020, declared her place of residence as the area falling within the competence of the City of Wuppertal.

9 On 6 November 2020, the City of Wuppertal requested the applicant in the main proceedings to leave the national territory without delay. No response was given to that request, since she was no longer contactable at the address stated in her residence declaration.

10 On 24 September 2021, the applicant in the main proceedings gave birth to a child, who has German nationality derived from the father.

11 The applicant in the main proceedings lives with that child in respect of whom she alone has rights of custody. Although he pays a maintenance allowance, the father has little contact with the child, visiting the child only at weekends and not being in a position, for professional reasons, to take care of the child for periods of several weeks.

12 On 12 April 2022, the applicant in the main proceedings applied to the City of Wuppertal for a residence permit for the purposes of the exercise of parental responsibility.

13 Since the City of Wuppertal did not rule on that application, the applicant in the main proceedings, on 13 December 2022, brought an action before the Verwaltungsgericht Düsseldorf (Administrative Court, Düsseldorf, Germany), which is the referring court, to obtain a decision on that application.

14 According to the City of Wuppertal, the issue of a residence permit to the applicant in the main proceedings is precluded, because, having entered Germany clandestinely between December 2020 and June 2021, she satisfies the conditions for the offence laid down in point 2 of Paragraph 95(1) of the AufenthG. It follows that there is an interest in the expulsion of the applicant from the national territory in

accordance with point 2 of Paragraph 5(1) of the AufenthG, which precludes the issue of a residence permit, and this may not be derogated from.

15 The City of Wuppertal also argued that the issue of a residence permit presupposes entry into the territory with the required visa, a condition which is not satisfied in the present case. In addition, the applicant in the main proceedings could reasonably be required to leave the German territory in order to initiate subsequently, in her country of origin, the procedure for granting visas, since such a requirement would not jeopardise the best interests of the child given the brief duration – less than one month – of the procedure. Lastly, the conditions for the grant of a derived right of residence under Article 20 TFEU are also not satisfied. If they were to depart together in order to initiate the visa procedure, the child, who is not of compulsory school age, would have to leave the territory of the European Union only for a short period, with the result that the essence of the right recognised in that provision would not be affected. Furthermore, the interruption of contact between the child and her father for a period of less than one month would be acceptable.

16 By a partial judgment of 23 November 2023, the referring court ordered the City of Wuppertal to issue the applicant in the main proceedings, pursuant to point 3 of Paragraph 28(1) of the AufenthG, with a residence permit for the purposes of family reunification, valid from the date of that judgment.

17 As regards the period prior to that date ('the period at issue'), that court considers that it is established that national law precludes the issue of a residence permit to the applicant in the main proceedings, since, during that period, there was an interest in her expulsion on account of her illegal stay in German territory. The grant of a residence permit on humanitarian grounds is also precluded.

18 Therefore, that court considers that it is essential, in the present case, to determine whether a derived right of residence under Article 20 TFEU arose during the period at issue and, if so, whether that right arose automatically under EU law and from when that right took effect.

19 In the first place, as regards the existence of a right of residence under Article 20 TFEU, the referring court states that, in accordance with part of the national case-law, the conditions required for the grant of such a right of residence are satisfied only where a visa procedure cannot reasonably be conducted subsequently within a short period of time which can be reliably defined. That case-law is based on an interpretation *a contrario* of the judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C82/16, EU:C:2018:308, paragraph 58), in which the Court held that it is contrary to the objective pursued by Article 20 TFEU to compel a third-country national to leave the territory of the European Union 'for an indefinite period'.

20 However, that court has doubts as to such an interpretation. In particular, it states that, in the judgment of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)* (C451/19 and C532/19, EU:C:2022:354, paragraph 48), the Court appeared to suggest that, in order to rely on a derived right of residence on the basis of Article 20 TFEU, it suffices to state that no right of residence, under national law or secondary EU law, may be granted to a third-country national who is a family member of a Union citizen, once it has been established that there is a relationship of dependency between that third-country national and that Union citizen such as would result in that Union citizen being obliged to leave the territory of the European Union in the event of removal from that territory of a family member who is a third-country national. Furthermore, it follows from the judgments of 22 June 2023, *Staatssecretaris van Justitie en Veiligheid (Thai mother of a Dutch minor child)* (C459/20, EU:C:2023:499, paragraph 30), and of 27 April 2023, *M.D.(Ban on entering Hungary)* (C528/21, EU:C:2023:341, paragraph 59), that the primary and individual right conferred by Article 20 TFEU, as a consequence of the status of citizen of the Union, to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the FEU Treaty and the measures

adopted for their implementation, has no value without a right to enter the territory of the European Union.

21 In the second place, that court asks whether the derived right of residence under Article 20 TFEU must be 'granted' by virtue of the competence of the Member States or whether that right already arises under EU law. According to the majority view expressed in the national case-law, the right of residence under Article 20 TFEU arises directly under EU law, since the competent national authorities are required only to issue a declaratory act.

22 The referring court has doubts, however, in that regard. It is inclined to the view that the right flowing from Article 20 TFEU does not arise directly by virtue of EU law, but that it must first be conferred or granted by the competent national authorities by a measure giving rise to that right. It states, in that regard, that the Court, in its case-law, draws certain distinctions in the way in which rights of residence under EU law arise.

23 Thus, as regards the rights of residence flowing from Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition: Series I Volume 1968(II), p. 475), the Court held, in the judgment of 17 September 2002, *Baumbast and R* (C413/99, EU:C:2002:493, paragraph 75), that that provision entitles the parent who is the primary carer of the children, irrespective of his or her nationality, to reside with them. The same is true of the judgment of 19 October 2004, *Zhu and Chen* (C200/02, EU:C:2004:639, paragraph 47), which concerned Article 18 EC, corresponding to Article 21 TFEU, and Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26), in which the Court held that EU law allows a parent, who is a third-country national and the primary carer of a child who is a Union citizen, to reside with that child in the host Member State. By contrast, in the judgment of 8 March 2011, *Ruiz Zambrano* (C34/09, EU:C:2011:124), the Court established a negative criterion, under which Article 20 TFEU precludes Member States from refusing residence and a work permit. It follows that EU law does not directly authorise residence, since the Member States may have the right to refuse residence.

24 In the third place, if EU law gives rise to the right of residence, that court asks from what point in time that right arises. In that context, the question arises whether the creation of a right of residence under Article 20 TFEU presupposes a prior application, as the Court suggested in the judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C82/16, EU:C:2018:308, paragraph 57). It is also possible that the right of residence of the applicant in the main proceedings arose with the birth of the child or when it was established that a right of residence could not be granted under national or secondary EU law. Those questions would arise even if the right of residence under Article 20 TFEU were to come about by virtue of a decision taken by the competent national authorities.

25 In those circumstances, the Verwaltungsgericht Düsseldorf (Administrative Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the right of residence under Article 20 TFEU depend on whether a visa procedure, which is required by law for the issue of a national residence permit, can reasonably be carried out at a later stage within a short period of time that can be reliably limited?

(2) Does the right of residence under Article 20 TFEU arise by virtue of EU law, with the result that that right only needs to be certified by the national authorities, or must such a right of residence be granted constitutively by the national authorities?

(3) In the event that the right of residence arises automatically by virtue of EU law: at which point in time does the right arise?

(4) In the event that the right of residence must be granted by national authorities: at which point in time must it be granted with retroactive effect?'

Consideration of the questions referred

The second question

26 By its second question, which it is appropriate to examine in the first place, the referring court asks whether Article 20 TFEU must be interpreted as meaning that the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen flows directly from EU law, with the result that the residence permit issued on that basis by the competent national authorities does not have the nature of a measure giving rise to rights.

27 It should be borne in mind that, in accordance with settled case-law, the Court has held that there are very specific situations in which, despite the fact that secondary law on the right of residence of third-country nationals 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 third-country national 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 effective enjoyment of the substance of the rights conferred by that status (judgment of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)*, C451/19 and C532/19, EU:C:2022:354, paragraph 45 and the case-law cited).

28 However, a refusal to grant a right of residence to a third-country national is liable to undermine the effectiveness of Union citizenship only if there exists, between that third-country national and the Union citizen who is a family member, a relationship of dependency of such a nature that it would lead to the Union citizen being compelled to accompany the third-country national concerned and to leave the territory of the European Union as a whole (judgment of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)*, C451/19 and C532/19, EU:C:2022:354, paragraph 46 and the case-law cited).

29 It follows that a third-country national may claim a derived right of residence under Article 20 TFEU only if, in the absence of the grant of such a right of residence, both the third-country national and the Union citizen, as a family member, were obliged to leave the territory of the European Union. Accordingly, the grant of such a derived right of residence may be possible only where a third-country national who is a family member of a Union citizen does not satisfy the requirements for obtaining, on the basis of other provisions and, in particular, under the national legislation applicable to family reunification, a right of residence in the Member State of which that citizen is a national (judgment of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)*, C451/19 and C532/19, EU:C:2022:354, paragraph 47 and the case-law cited).

30 However, once it has been established that no right of residence, under national law or secondary EU law, may be granted to a third-country national who is a family member of a Union citizen, the consequence of the fact that there is, between that third-country national and that Union citizen, a relationship of dependency such as would result in that Union citizen being obliged to leave the territory of the European Union as a whole, in the event of removal of his or her family member, who is a third-country national, from that territory, is that, in principle, Article 20 TFEU requires the Member State concerned to recognise that that third-country national has a derived right of residence (judgment of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)*, C451/19 and C532/19, EU:C:2022:354, paragraph 48 and the case-law cited).

31 It follows that the derived right of residence accorded, in the very specific situations described in paragraphs 27 to 30 above, to a third-country national who is a family member of a Union citizen stems directly from Article 20 TFEU (see, to that effect, judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C82/16, EU:C:2018:308, paragraph 89).

32 It follows that the derived right of residence enjoyed, on the basis of Article 20 TFEU, by a third-country national who is a family member of a Union citizen is acquired directly under EU law, irrespective of whether the competent national authorities have issued a residence permit, like the right of residence of Union citizens accorded by virtue of one of the freedoms of movement laid down in the FEU Treaty or the derived right of residence of third-country nationals who are family members of Union citizens, based on the exercise by those citizens of one of those freedoms, such as that laid down in Article 21(1) TFEU (see, to that effect, judgments of 19 October 2004, *Zhu and Chen*, C200/02, EU:C:2004:639, paragraph 46, and of 5 June 2018, *Coman and Others*, C673/16, EU:C:2018:385, paragraphs 23 and 24).

33 Therefore, where a Member State issues residence permits to persons enjoying a right of residence in the territory of that Member State on the basis of Article 20 TFEU, such a permit must be regarded not as a measure giving rise to rights, but as a measure by that Member State serving to prove the individual position of a third-country national in light of EU law.

34 Contrary to what the Danish Government has submitted, it is irrelevant in that regard that the derived right of residence under Article 20 TFEU is subject to the fulfilment of a number of conditions arising from the case-law referred to in paragraphs 27 to 30 above, in particular the condition that a right of residence cannot be obtained on another basis. Where the conditions required for the recognition of such a right of residence are satisfied, that right is acquired, irrespective of whether that right may be established by a decision taken by the competent national authorities, whereas, conversely, where the conditions for the recognition of that right of residence are not satisfied, that right is not acquired, without it being necessary, in the same way, for the refusal to be recorded in such a decision.

35 As a consequence, the answer to the second question is that Article 20 TFEU must be interpreted as meaning that the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen flows directly from EU law, with the result that the residence permit issued on that basis by the competent national authorities does not have the nature of a measure giving rise to rights.

The third question

36 By its third question, which it is appropriate to examine in the second place, the referring court asks whether Article 20 TFEU must be interpreted as meaning that the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen arises at the time when the application seeking recognition of such a right of residence is submitted.

37 In that regard, it suffices to state that it follows from the case-law recalled in paragraphs 27 to 30 above that the benefit of that right of residence must be accorded to the third-country national who is a family member of a Union citizen from the moment when the relationship of dependency between the third-country national and that Union citizen comes into being (judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C82/16, EU:C:2018:308, paragraph 89).

38 In a case such as that in the main proceedings, the moment when the relationship of dependency at issue comes into being is likely to correspond to that of the birth of that child. However, it is, in any event, for the competent national courts or authorities alone to assess, by reference to the specific circumstances of each particular case, the exact point at which it may be considered that that relationship of dependency exists between that national and that Union citizen.

39 Consequently, the answer to the third question is that Article 20 TFEU must be interpreted as meaning that the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen arises not at the time when the application for recognition of such a right of residence is submitted, but from the time when the relationship of dependency between that national and that Union citizen arises.

The first question

40 By its first question, which it is appropriate to examine in the third place, the referring court asks whether Article 20 TFEU must be interpreted as precluding national legislation which makes recognition of the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen, subject to the condition that that national must subsequently be issued with a visa in that third country.

Admissibility

41 The European Commission queries the relevance of that question to the decision in the main proceedings, since the visa requirement referred to in those proceedings forms part of the procedure for granting a right of residence under national law, whereas such a right of residence was not granted to the applicant in the main proceedings for the period at issue. It is therefore not clear how that visa requirement is likely to affect the grant, so far as that period is concerned, of a right of residence under EU law.

42 In that regard, it is clear from the Court's settled case-law that questions on the interpretation of EU law referred by a national court, in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 27 April 2023, *M.D. (Ban on entering Hungary)*, C528/21, EU:C:2023:341, paragraph 49 and the case-law cited).

43 In the present case, while it is true that the condition relating to the subsequent issue of a visa, alluded to by the referring court, forms part of the procedure for granting a right of residence under national law, it is nevertheless apparent from the order for reference that that court considers that that condition is also required for the purpose of recognising a derived right of residence under Article 20 TFEU.

44 In those circumstances, it cannot be held that the interpretation of Article 20 TFEU sought by the first question is entirely unrelated to the subject matter of the dispute in the main proceedings or that the problem raised by that question is hypothetical.

45 It follows that that question is admissible.

Substance

46 It should be borne in mind that, according to the case-law of the Court, it is for the Member States to determine the detailed rules on how to give effect to the derived right of residence which must be granted, in the very specific situations referred to in paragraphs 27 to 30 above, to a third-country national under Article 20 TFEU, provided that those procedural arrangements do not undermine the effectiveness of that provision by resulting in that citizen having to leave the territory of the European Union as a whole and, by reason of the existence of a relationship of dependency between that national and the Union citizen, the latter is, in fact, obliged to accompany him or her and, consequently, also to leave the territory of the

European Union (see, to that effect, judgment of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*, C836/18, EU:C:2020:119, paragraphs 50 and 51 and the case-law cited).

47 Furthermore, according to the case-law, although the derived right of residence flowing from Article 20 TFEU is not absolute and although the Member States may refuse to grant it in certain specific circumstances, the fact remains that that provision does not allow Member States to introduce exceptions to that derived right of residence constituting an impairment of the effective enjoyment of the essential rights flowing from the status of Union citizen which would be disproportionate in relation to the objective pursued by such exceptions (see, to that effect, judgments of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*, C836/18, EU:C:2020:119, paragraphs 47 and 48, and of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources*), C451/19 and C532/19, EU:C:2022:354, paragraph 49).

48 That is the case with national legislation which makes the recognition of the derived right of residence enjoyed, on the basis of Article 20 TFEU, by a third-country national who is a family member of a Union citizen subject to the condition that that national is subsequently issued with a visa in that third country.

49 In that regard, it is true that the Court has already held that the obligation imposed by a national practice on a third-country national first to leave the territory of the European Union before any examination of whether there may be a relationship of dependency between that national and the Union citizen who is a family member, in order to request the withdrawal or suspension of an entry ban to which he or she was subject, was liable to undermine the effectiveness of Article 20 TFEU if compliance with that obligation has the consequence that, because of the existence of a relationship of dependency between that third-country national and that Union citizen, the Union citizen is, in practice, compelled to accompany the third-country national and, therefore, to leave, also, the territory of the European Union for a period of time that is indefinite (see, to that effect, judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C82/16, EU:C:2018:308, paragraphs 55 and 56).

50 However, contrary to what the German Government submits, it cannot be inferred from that that the obligation for a third-country national who is a family member of a Union citizen to leave the territory of a Member State in order to satisfy the condition of subsequently being issued with a visa in a third country does not undermine the effectiveness of Article 20 TFEU in the event that the procedure for granting that visa in that third country is for a limited period of time, which is, in the present case, less than one month, with the result that the applicant in the main proceedings could leave Germany with her child, a German national, who is not of compulsory school age, in order subsequently to initiate the procedure for granting visas in her country of origin.

51 That condition is capable of directly affecting the very substance of the derived right of residence conferred by EU law on a third-country national who is a family member of a Union citizen in the very specific situations referred to in paragraphs 27 to 30 above, in so far as the exercise of such a right of residence necessarily presupposes that that third-country national may enter the territory of the Member State concerned, and, therefore, could lead to depriving that Union citizen of the genuine enjoyment of the substance of the rights which that status confers on him or her, where, owing to the relationship of dependency between those persons, that condition compels that citizen, de facto, to leave the territory of the European Union as a whole, in order to go with the family member who is the third-country national who is subject to that condition (see, to that effect, judgments of 27 April 2023, *M.D. (Ban on entering Hungary)*, C528/21, EU:C:2023:341, paragraph 60 and the case-law cited, and of 22 June 2023, *Staatssecretaris van Justitie en Veiligheid (Thai mother of a Dutch minor child)*, C459/20, EU:C:2023:499, paragraphs 27 and 31).

52 In addition, in the present case, such a condition could result in a third-country national being compelled to leave the territory of the European Union as a whole, even though it has been established by the competent national authorities that there exists, between that national and the Union citizen who is a family member, a relationship of dependency of such a nature that the Union citizen would be compelled to accompany that third-country national to his or her country of origin, thus depriving that citizen of the genuine enjoyment of the substance of the rights conferred on him or her by his or her status, even though, precisely because of that relationship of dependency, a derived right of residence ought, as a general rule, to be accorded to that third-country national under Article 20 TFEU (see, to that effect, judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C82/16, EU:C:2018:308, paragraphs 57 and 58).

53 It follows that the condition that a third-country national must subsequently obtain in that country a visa to be granted a right of residence under Article 20 TFEU is a formal condition such as, in practice, to deny that national a right conferred by EU law, even though the substantive conditions for recognising such a right are satisfied. As a result, that condition is likely to deny the Union citizen, who is a family member, the effective enjoyment of the substance of the rights which that status confers on him or her, having regard to the relationship of dependency between those persons.

54 Moreover, such a condition, which compels a third-country national who is a family member of a Union citizen, in the very specific situations referred to in paragraphs 27 to 30 above, and, therefore, that Union citizen, to leave the territory of the European Union, if only for a limited period of time and, in any event, without any guarantee of return, cannot be regarded as proportionate in the light of the objective pursued by that condition.

55 In the light of what has been stated, moreover, in paragraphs 35 and 39 above, that conclusion is supported by the fact, highlighted by the German Government, that the national legislation provides for the possibility of waiving the visa procedure at issue in the particular case where there is a legal right to a residence permit.

56 Consequently, the answer to the first question is that Article 20 TFEU must be interpreted as precluding national legislation which makes recognition of the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen, subject to the condition that that national must subsequently be issued with a visa in that third country.

The fourth question

57 Given the answer to the second question, there is no need to answer the fourth question.

Costs

58 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 (Tenth Chamber) hereby rules:

1. **Article 20 TFEU must be interpreted as meaning that the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen flows directly from EU law, with the result that the residence permit issued on that basis by the competent national authorities does not have the nature of a measure giving rise to rights.**

2. **Article 20 TFEU must be interpreted as meaning that the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen arises not at the time when the application for recognition of such a right of residence is submitted, but from the time when the relationship of dependency between that national and that Union citizen arises.**

3. **Article 20 TFEU must be interpreted as precluding national legislation which makes recognition of the derived right of residence enjoyed, on the basis of that provision, by a third-country national who is a family member of a Union citizen, subject to the condition that that national must subsequently be issued with a visa in that third country.**

[Signatures]

* Language of the case: German.