ECLI:EU:C:2022:639

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

7 September 2022 (*)

(Reference for a preliminary ruling – Directive 2003/109/EC – Status of third-country nationals who are long-term residents – Scope – Third-country national with a right of residence under Article 20 TFEU – Article 3(2)(e) – Residence solely on temporary grounds – Autonomous concept of EU law)

In Case C-624/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, Netherlands), made by decision of 24 November 2020, received at the Court on the same day, in the proceedings

E. K.

v

Staatssecretaris van Justitie en Veiligheid,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, C. Lycourgos, I. Jarukaitis, N. Jääskinen, I. Ziemele (Rapporteur) and J. Passer, Presidents of Chambers, F. Biltgen, P.G. Xuereb, N. Piçarra, L.S. Rossi, A. Kumin, N. Wahl and O. Spineanu-Matei, Judges,

Advocate General: J. Richard de la Tour,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 December 2021,

after considering the observations submitted on behalf of:

– E. K., by E.C. Gelok and H. Lichteveld, advocaten,

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

– the Danish Government, by J. Nymann-Lindegren, M. Søndahl Wolff and L. Teilgård, acting as Agents,

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

– the European Commission, by C. Cattabriga, E. Montaguti and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 March 2022,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3(2)(e) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

2 The request has been made in proceedings between E. K., a Ghanaian national with a right of residence in the Netherlands under Article 20 TFEU, and the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands), concerning the latter's decision to refuse the application submitted by E. K. for the grant of a long-term resident's residence permit.

Legal context

European Union law

3 Recitals 4, 6 and 12 of Directive 2003/109 state:

'(4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the [EC] Treaty.

…

(6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis.

…

(12) In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.'

4 Article 3 of that directive, entitled 'Scope', reads as follows:

‘1. This Directive applies to third-country nationals residing legally in the territory of a Member State.

2. This Directive does not apply to third-country nationals who:

…

(e) reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited;

…’

5 Article 4 of the same directive, entitled ‘Duration of residence’, provides, in paragraph 1 thereof:

‘Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.’

6 Article 5 of Directive 2003/109, entitled ‘Conditions for acquiring long-term resident status’, provides:

‘1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

(a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;

(b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.’

Netherlands law

The Vreemdelingenwet 2000

7 Article 8 of the Wet tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000) (Law providing for a comprehensive review of the Law on foreign nationals (Law on foreign nationals 2000)) of 23 November 2000 (Stb. 2000, No 495), in the version applicable to the dispute in the main proceedings, provides:

‘A foreign national is lawfully resident in the Netherlands only:

…

(e) by virtue of his/her status as a Union national, so long as the person resides in the Netherlands on the basis of arrangements established under the FEU Treaty or the Agreement on the European Economic Area (EEA)'.

8 Article 45b of that law reads as follows:

'1. An application for the grant of a long-term resident's EU residence permit shall be refused where, immediately before the application is made, the foreign national:

(a) has a temporary right of residence pursuant to a fixed-term residence permit referred to in Article 14;

(b) has a formally limited right of residence;

(c) is resident on the basis of a special privileged status;

(d) is resident pursuant to a fixed-term residence permit referred to in Article 28 that was not granted pursuant to Article 29(1)(a) or (b);

(e) is resident pursuant to a fixed-term residence permit referred to in Article 28 that was granted pursuant to Article 29(2), in the case of a foreign national who holds a residence permit referred to in Article 28 that was not granted pursuant to Article 29(1)(a) or (b).

2. Without prejudice to paragraph 1, an application for the grant of a long-term resident's EU residence permit may be refused only where the foreign national:

(a) has not been lawfully resident for a continuous period of five years immediately prior to submitting the application referred to in Article 8, taking into account paragraph 3;

(b) during the period referred to in (a), has resided outside the Netherlands either for 6 months consecutively or longer or for a total of 10 months or longer;

(c) does not have, independently and on a long-term basis, sufficient means of subsistence, whether or not jointly with the family member with whom he/she resides;

(d) has been convicted by a judgment which has become final of an offence punishable by a prison sentence of three years or more, or the measure referred to in Article 37a of the [Wetboek van Strafrecht (Criminal Code)] has been imposed on him/her in that regard;

(e) represents a threat to national security;

(f) does not have sufficient sickness insurance for himself/herself and for his/her dependent family members; or

(g) has not passed the examination provided for in Article 7(1)(a) of the [Wet inburgering (Law on civic integration)] or obtained a diploma, certificate or other document referred to in Article 5(1)(c) of that law.

3. For the calculation of the period referred to in paragraph 2(a), no account shall be taken of residence within the meaning of paragraph 1 and residence within the meaning of paragraph 2(b),

with the exception of residence for the purpose of studies or vocational training, which shall be counted as half.

4. Rules concerning the application of paragraphs 1 and 2 may be established by or pursuant to a general administrative measure.'

The Vreemdelingenbesluit 2000

9 Article 3.5 of the Besluit tot uitvoering van de Vreemdelingenwet 2000 (Vreemdelingenbesluit 2000) (Decree implementing the Law on foreign nationals (Decree on foreign nationals 2000)) of 23 November 2000 (Stb. 2000, No 497), in the version applicable to the dispute in the main proceedings, states:

'1. The right of residence on the basis of an ordinary, fixed-term residence permit shall be temporary or non-temporary.

2. The right of residence shall be temporary if the residence permit is granted subject to a restriction relating to:

(a) residence as a family member, where the reference person:

1° has a temporary right of residence, or

2° holds a temporary residence permit on grounds of asylum;

(b) seasonal work;

(c) a temporary intragroup transfer;

(d) the cross-border provision of services;

(e) an apprenticeship;

(f) studies;

(g) the search for and performance of work, whether salaried or not;

(h) an exchange, whether or not under an agreement;

(i) medical treatment;

(j) temporary humanitarian grounds;

(k) the wait for an application under Article 17 of the [Rijkswet op het Nederlandschap (Law on Netherlands citizenship)].

3. In performance of obligations arising from treaties or binding decisions of organisations governed by international law, a ministerial regulation may determine cases where, by way of derogation from paragraph 2, the right of residence is non-temporary.

4. If it is granted subject to a restriction other than those listed in paragraph 2, the residence permit shall be non-temporary, unless it was provided otherwise when it was granted.'

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

10 The applicant in the main proceedings, E. K., is a Ghanaian national. Her son, who was born on 10 February 2002, has Netherlands nationality. On 9 September 2013, E. K. obtained, under Article 20 TFEU, a residence permit in the Netherlands bearing the endorsement 'family member of a Union citizen'.

11 On 18 February 2019, on the basis of the national legislation transposing Directive 2003/109 into domestic law, she submitted an application for a long-term resident's EU residence permit. That application was refused by the State Secretary for Justice and Security, who took the view, inter alia, that the right of residence under Article 20 TFEU was temporary and that, for that reason, E. K. could not be granted the residence permit applied for. The complaint lodged by E. K. against that decision was declared unfounded.

12 E. K. brought an action against that refusal decision before the referring court, the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, Netherlands).

13 That court is uncertain, first of all, as to the temporary nature of a right of residence obtained under Article 20 TFEU. In particular, the question arises, first, as to whether a right of residence may be qualified as 'temporary' only if it is established that that right will end on a specific date, known in advance, and, second, as to whether or not the temporary nature of the right of residence under Article 20 TFEU may be linked to the intention of the third-country national who holds it, E. K. having stated, inter alia, her intention to settle permanently in the territory of the Kingdom of the Netherlands. Next, that court observes that E. K. and the State Secretary for Justice and Security disagree as to whether the determination of whether or not the right of residence under Article 20 TFEU is temporary falls within the competence of the Member States or whether, on the contrary, the concept of 'temporary right of residence' must be given a uniform interpretation at EU level. Finally, the same court questions whether Article 3(2)(e) of Directive 2003/109 has been correctly transposed into Netherlands law.

14 In those circumstances, the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is it within the competence of the Member States to determine whether the right of residence on the basis of Article 20 TFEU is in itself of a temporary or a non-temporary nature, or should it be interpreted in conformity with Union law?

(2) If interpretation must be in conformity with Union law, does a distinction then exist, when applying Directive [2003/109], between the various dependents' residence rights to which third-country nationals are entitled on the basis of Union law, including the dependent's right of residence granted to a family member of a Union citizen on the basis of [Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on 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 the right of residence on the basis of Article 20 TFEU?

(3) Is the right of residence on the basis of Article 20 TFEU, which by its nature depends on the existence of a relationship of dependency between the third-country national and the Union citizen and is therefore finite, of a temporary nature?

(4) If the right of residence on the basis of Article 20 TFEU is of a temporary nature, must Article 3(2)(e) of the Directive then be interpreted as precluding national legislation which only excludes residence permits issued under national law from acquiring long-term residence status within the meaning of the Directive?'

Consideration of the questions referred

First question

15 As a preliminary point, it should be recalled that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 7 April 2022, *Avio Lucos*, C-176/20, EU:C:2022:274, paragraph 25 and the case-law cited).

16 By its first question, the referring court asks whether the determination of the temporary nature of the right of residence under Article 20 TFEU falls within the competence of the Member States or whether, on the contrary, it 'should … be interpreted in conformity with Union law'.

17 It is however apparent from the grounds of the request for a preliminary ruling that that question is asked with a view to determining whether the situation of E. K., who holds a right of residence under Article 20 TFEU, falls within the scope of Directive 2003/109, having regard, in particular, to Article 3(2)(e) of that directive.

18 In those circumstances, it must be considered that, by its first question, the referring court asks, in essence, whether Article 3(2)(e) of Directive 2003/109 must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, is an autonomous concept of EU law, which must be interpreted uniformly throughout the Member States.

19 It must be recalled that, according to settled case-law of the Court, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (judgments of 18 October 2012, *Singh*, C-502/10, EU:C:2012:636, paragraph 42, and of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 41 and the case-law cited).

20 While the wording of Article 3(2)(e) of Directive 2003/109 does not include a definition of the terms 'who … reside solely on temporary grounds', that directive does not contain any reference to the law of the Member States as regards the meaning of those terms, either. It follows that those terms must be regarded, for the purposes of application of the directive, as designating an autonomous concept of EU law which must be interpreted in a uniform manner throughout the Member States (see, by analogy, judgment of 18 October 2012, *Singh*, C-502/10, EU:C:2012:636, paragraph 43).

21 In the light of the foregoing considerations, the answer to the first question is that Article 3(2)(e) of Directive 2003/109 must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, is an autonomous concept of EU law, which must be interpreted uniformly throughout the Member States.

Second and third questions

22 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(2)(e) of Directive 2003/109 must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, covers the residence of a third-country national under Article 20 TFEU within the territory of the Member State of which the Union citizen concerned is a national.

23 As a preliminary point, it should be recalled that Article 3 of Directive 2003/109 determines the scope of that directive.

24 While paragraph 1 of that article provides that the directive applies to third-country nationals residing legally in the territory of a Member State, paragraph 2 thereof excludes from its scope certain types of residence. In particular, Article 3(2)(e) of the same directive provides that it does not apply to third-country nationals who reside solely on temporary grounds such as au pairs or seasonal workers, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited.

25 In that regard, it should be noted, first of all, that the residence of a third-country national in the territory of a Member State, pursuant to Article 20 TFEU, satisfies the condition laid down in Article 3(1) of Directive 2003/109, which provides that that directive applies to third-country nationals residing legally in the territory of a Member State.

26 As to whether a third-country national who holds a residence permit in the territory of a Member State under Article 20 TFEU is, however, excluded from the scope of Directive 2003/109 by virtue of Article 3(2)(e) thereof, it must be recalled that that provision covers two distinct cases, namely, first, that of third-country nationals who reside exclusively on temporary grounds and, second, that of third-country nationals whose residence permits have been formally limited (judgment of 18 October 2012, *Singh*, C-502/10, EU:C:2012:636, paragraph 38).

27 So far as concerns the first case, which alone is the subject of the present request for a preliminary ruling, it should be noted that neither Article 3 nor any other provision of Directive 2003/109 specifies what is to be understood by the concept of residence 'solely on temporary grounds' within the meaning of paragraph 2(e) of that article.

28 As follows from settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording, by considering the latter's usual meaning in everyday language, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 16 July 2015, *Maïstrellis*, C-222/14, EU:C:2015:473, paragraph 30 and the case-law cited). The legislative history of the provision concerned may also reveal elements that are relevant to its interpretation (see, to that effect, judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraph 37).

29 In the first place, it should be noted that Article 3(2)(e) of Directive 2003/109 provides that that directive does not apply to third-country nationals 'who … reside solely on temporary grounds' within the territory of the Member State concerned.

30 In the light of the meaning of that wording in everyday language, such a condition entails examining whether the ground justifying that residence implies, from the start of the residence, that it had been intended to be exclusively for a short duration. As the Court has already held, temporary grounds, within the meaning of Article 3(2)(e) of Directive 2003/109, do not prima facie reflect any intention on the part of the third-country national to settle on a long-term basis in the territory of the Member States (see, to that effect, judgment of 18 October 2012, *Singh*, C-502/10, EU:C:2012:636, paragraph 47).

31 That literal interpretation of the words 'who … reside solely on temporary grounds' in Article 3(2)(e) of Directive 2003/109 is illustrated by the list of residences whose grounds have such a characteristic appearing in that provision. Specific mention is made, by way of example, of residences of third-country nationals as au pairs or seasonal workers, as workers posted by a service provider to provide cross-border services, or as cross-border providers of services.

32 The common objective characteristic of such residences is that they are strictly limited in time and are intended to be of short duration, meaning that they do not permit the long-term residence of a third-country national in the territory of the Member State concerned (see, to that effect, judgment of 18 October 2012, *Singh*, C-502/10, EU:C:2012:636, paragraphs 48 and 50).

33 Such a finding is, moreover, supported by the explanatory memorandum to the Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (COM(2001) 127 final), relating to Article 3(2)(d) of that proposal, which essentially corresponds to Article 3(2)(e) of Directive 2003/109. According to that explanatory memorandum, the categories of persons specifically mentioned in Article 3(2)(d) of that proposal are not intended to settle on a long-term basis in the territory of the Member State concerned.

34 It must therefore be held that, in the light of the wording and legislative history of Article 3(2)(e) of Directive 2003/109, the concept of residence 'solely on temporary grounds', within the meaning of that provision, covers any residence in the territory of a Member State which is based solely on grounds having the objective characteristic of implying that it is strictly limited in time and is intended to be of short duration, not permitting the long-term residence of the third-country national concerned within the territory of that Member State.

35 It must be pointed out, however, that a third-country national's residence within the territory of a Member State under Article 20 TFEU does not have such an objective characteristic.

36 In that regard, it should be borne in mind that, according to settled case-law of the Court, a right of residence under Article 20 TFEU is to be granted to a third-country national who is a family member of a Union citizen, such as E. K, only in very specific situations in which, despite the fact that secondary law on the right of residence of third-country nationals does not apply and that citizen has not made use of his or her freedom of movement, the refusal to grant such a right would oblige the said citizen 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 (see, to that effect, judgments of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraph 63, and of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*, C-836/18, EU:C:2020:119, paragraph 39 and the case-law cited).

37 For such a refusal to be capable of undermining the effectiveness of Union citizenship, there must therefore exist, 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 – unless the said national is recognised as having of a right of residence within the territory of the Union – being compelled to accompany that national and to leave the territory of the European Union as a whole (see, to that effect, judgment of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*, C-836/18, EU:C:2020:119, paragraph 40 and the case-law cited).

38 As follows from the Court's case-law, it is in the light of the intensity of the relationship of dependency between the third-country national concerned and the Union citizen, who is a family member of the former, that the recognition of a right of residence under Article 20 TFEU must be assessed, and such an assessment must take account of all the circumstances of the case (see, to that effect, judgments of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraph 71; of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 72; and of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*, C-836/18, EU:C:2020:119, paragraph 56).

39 In that regard, the Court, in assessing whether such a relationship of dependency between a child who is a Union citizen and his or her third-country national parent exists, has held that it was necessary to take into consideration the question of the custody of that child and of whether the child is legally, financially or emotionally dependant on the third-country national parent (see, to that effect, judgments of 6 December 2012, *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 56, and of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraph 51). The age of the child, the child's physical and emotional development, the extent of his or her emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for that child's equilibrium have also been deemed relevant factors (judgment of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraph 71).

40 As regards the assessment of the existence of a relationship of dependency between adults, the Court has noted that while an adult is, as a general rule, capable of living an independent existence apart from the members of his or her family, the identification of a relationship between two adult members of the same family as such a relationship of dependency is also conceivable in exceptional cases, where there could be no form of separation of the individual concerned from the member of his or her family on whom he or she is dependent (see, to that effect, judgments of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 65, and of 5 May 2022, *Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources)*, C-451/19 and C-532/19, EU:C:2022:354, paragraph 56).

41 Thus, it must be held that the right of residence of a third-country national under Article 20 TFEU, in his or her capacity as a family member of a Union citizen, is justified on the ground that such residence is necessary in order for that Union citizen to be able genuinely to enjoy the substance of the rights conferred by that status for as long as the relationship of dependency with that national persists. Although, admittedly, such a relationship of dependency disappears, as a rule, with the passage of time, it is not, in principle, intended to be of short duration. Consequently, the reason for the residence effected in the territory of a Member State, pursuant to Article 20 TFEU, is not such as to prevent the long-term residence of the third-country national concerned in the territory of that Member State. The relationship of dependency justifying such residence, the main characteristics of which have been set out in paragraphs 37 to 40 above, may extend over a considerable period and as regards, more specifically, a third-country national who is the parent of a

child who is a citizen of the Union, in principle, until the child reaches the age of majority, or even beyond that age if the conditions are met.

42 In those circumstances, the residence of a third-country national in the territory of a Member State under Article 20 TFEU cannot be regarded as constituting residence 'solely on temporary grounds' within the meaning of Article 3(2)(e) of Directive 2003/109.

43 In the second place, that interpretation, based on the wording and legislative history of Article 3(2)(e) of Directive 2003/109, is borne out by the objectives pursued by that directive.

44 As the Court has already held, it is apparent from recitals 4, 6 and 12 of that directive that its principal objective is the integration of third-country nationals who are settled on a long-term basis in the Member States (judgments of 26 April 2012, *Commission* v *Netherlands*, C-508/10, EU:C:2012:243, paragraph 66; of 18 October 2012, *Singh*, C-502/10, EU:C:2012:636, paragraph 45; and of 3 October 2019, *X (Long-term residents – Stable, regular and sufficient resources)*, C-302/18, EU:C:2019:830, paragraph 29).

45 According to settled case-law, as is apparent from Article 4(1) of Directive 2003/109, read in the light of recital 6 thereof, that integration results above all from the five-year duration of the legal and continuous residence, referred to in that provision, that shows that the person concerned has put down roots in the Member State concerned and therefore that that person is a long-term resident (see, to that effect, judgment of 3 October 2019, *X (Long-term residents – Stable, regular and sufficient resources)*, C-302/18, EU:C:2019:830, paragraph 30 and the case-law cited).

46 In that regard, as has been noted, in essence, in paragraph 41 above, the duration of the residence of a third-country national in the territory of the Member States under Article 20 TFEU is liable to extend over a considerable period and thus be significantly longer than the duration set by Article 4(1) of Directive 2003/109.

47 Moreover, it is apparent from the Court's case-law that a third-country national who enjoys a right of residence under Article 20 TFEU must be granted a work permit in order to enable him or her to support his or her child who is a Union citizen, as otherwise that child will be deprived of the genuine enjoyment of the substance of the rights attaching to that status (see, to that effect, judgment of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraph 45). The exercise of an employment in the territory of the Member State concerned over a prolonged period is such as to ingrain that national's roots there even further.

48 In the third place, the said interpretation is in no way invalidated by the context in which the provision at issue occurs.

49 In that regard, it should be noted that the interpretation of Article 3(2)(e) of Directive 2003/109 set out in paragraph 42 above does not call into question the general scheme of that directive, since a third-country national who enjoys a right of residence under Article 20 TFEU must, in order to acquire long-term resident status, satisfy the conditions laid down in Articles 4 and 5 of the said directive. In addition to having resided legally and continuously within the territory of the Member State concerned for five years immediately prior to the submission of the relevant application, the third-country national must provide evidence that he or she has, for himself or herself and for dependent family members, stable and regular resources which are sufficient to maintain himself or herself and the members of his or her family without recourse to the social assistance system of the Member State concerned, and sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned. The Member State

concerned may also require third-country nationals to comply with integration conditions in accordance with their national law (see, to that effect, judgment of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraphs 38 and 39).

50 Moreover, the Netherlands and German Governments have submitted, inter alia, in essence, that, in view of the derivative nature of the right of residence enjoyed by a third-country national under Article 20 TFEU, that residence, although it will have been, hypothetically, completed for a legal and continuous period of five years, cannot justify the issue of a long-term residence permit under Directive 2003/109. Such a line of argument cannot be accepted.

51 It is true that 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. 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 freedom of movement and residence of a Union citizen within 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)*, C-836/18, EU:C:2020:119, paragraph 38 and the case-law cited).

52 However, such a circumstance is irrelevant for the purposes of determining whether the concept of residence ‘solely on temporary grounds’, within the meaning of Article 3(2)(e) of Directive 2003/109, covers the residence of a third-country national under Article 20 TFEU within the territory of the Member State of which the Union citizen concerned is a national.

53 First, Article 3 of that directive makes no distinction according to whether the third-country national in question resides legally within the territory of the European Union by virtue of an autonomous right or by virtue of a right derived from those enjoyed by the Union citizen concerned.

54 Nor, moreover, is such a distinction apparent from the other provisions of that directive, and in particular Article 4(1) thereof, which refers to the duration of legal and continuous residence of the third-country national within the territory of the Member States for five years immediately prior to the submission of the relevant application.

55 Second, the derivative nature of the right of residence within the territory of a Member State that a third-country national is recognised, under EU law, as having does not necessarily mean that the reasons justifying the grant of such a right preclude the long-term residence of that national within the territory of that Member State. Thus, it is sufficient to recall that, as has been noted in paragraph 41 above, the relationship of dependency which underpins the derived right of residence of a third-country national under Article 20 TFEU is not, in principle, intended to be of short duration, but may extend over a considerable period.

56 In the light of the foregoing considerations, the answer to the second and third questions is that Article 3(2)(e) of Directive 2003/109 must be interpreted as meaning that the concept of residence ‘solely on temporary grounds’, which is referred to therein, does not cover the residence of a third-country national under Article 20 TFEU within the territory of the Member State of which the Union citizen concerned is a national.

Fourth question

57 In view of the answer given to the second and third questions, 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 (Grand Chamber) hereby rules:

1. **Article 3(2)(e) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, is an autonomous concept of EU law, which must be interpreted uniformly throughout the Member States.**

2. **Article 3(2)(e) of Directive 2003/109 must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, does not cover the residence of a third-country national under Article 20 TFEU within the territory of the Member State of which the Union citizen concerned is a national.**

[Signatures]

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* Language of the case: Dutch.