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Judgment of the Court in Case C-607/21 | État belge (Proof of the relationship of dependency)

A third-country national who is the parent of a Union citizen enjoys a derived right of residence for more than three months in the host Member State if he or she proves, first, that he or she was dependent on that citizen in his country of origin on the date on which he or she left that country and, second, that he or she is dependent on that citizen on the date on which his or her application for a residence card was submitted, if several years have elapsed between those two dates

The derived right of residence cannot be refused to a third-country national who satisfies that condition on the ground that, under national legislation, he or she resides, on the date of his or her residence card application, illegally in the territory of the host Member State

A Moroccan national entered Belgium in 2011 and applied for family reunification with her son, a Belgian citizen. Following the rejection of that application, she applied, in 2015 and 2017, for a right of residence as a direct relative in the ascending line dependent on the Netherlands partner of her son, who, in 2005, made a declaration of cohabitation with him before the Belgian civil registrar.

That Moroccan national produced documents dating from 2010 and 2011, the period prior to her arrival in Belgium, to prove that she was materially dependent during that period on the household being joined. The Belgian authorities, however, rejected her residence card application, taking the view that those documents were too old to prove that she was dependent on that household in her country of origin before entering Belgium.

The Belgian Conseil d'État (Council of State) turned to the Court of Justice to find out what is the relevant date, under EU law, ¹ for assessing the condition that the parent, who is a third-country national, must be 'dependent' on the Union citizen being joined, where several years have elapsed between the entry of that parent into the host Member State and the submission of a new application for a residence card. In that context, it also wishes to know whether that parent may rely on documents issued before the departure from her country of origin and whether it is relevant that, under national law, that parent is residing illegally.

The Court considers that, in order for the direct relative in the ascending line of the partner of a Union citizen, who himself or herself satisfies the conditions laid down by the directive, ² to be able to **enjoy a derived right of residence**, he or she must demonstrate that he or she is, **both on the date of his or her residence card application, submitted several years after his or her arrival in the host Member State, and on the date of that arrival, dependent on that Union citizen and/or partner.**

Where those conditions are satisfied, that direct relative in the ascending line enjoys, under EU law, a right of residence which does not depend on the issue of a residence card and on the legality of the residence pursuant to national legislation. Consequently, that right **cannot be refused to him or her** on the ground that he or she

resides, according to national law, illegally in the territory of the Member State in which the Union citizen being joined and the partner of that citizen are established.

In order to demonstrate that he or she was, at the time of his or her arrival in the host Member State, 'dependent' within the meaning of EU law, that direct relative in the ascending line must be able to produce, in support of his or her application, documents **issued in the past** attesting to the existence of a situation of dependence in his or her country of origin on the date on which he or she physically joined that Union citizen and that partner. Those documents **cannot be deemed too old**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [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.

² Article 7 of Directive 2004/18.