



PRESS RELEASE No 110/25

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Advocate General's Opinion in Case C-147/24 | [Safi] ¹

Advocate General Tamara Čápetá: EU citizenship encompasses the right not to move

Union citizenship status of dependent minor may result in a derived right of residence for third-country national parent regardless of that parent's right to reside in another Member State

V is a third-country national and a mother of a minor child, who is a citizen of the Netherlands and has always lived in that Member State. V's spouse has dual nationality – that of the Netherlands and a third-country. The family resides in the Netherlands.

V's son has speech and language difficulties for which he receives special educational support, while V's spouse has a medical condition and receives social benefits.

Between 1999 and 2014, V resided in Spain and still holds a valid residence permit for that Member State. However, despite having lived in the Netherlands since 2014, she does not hold a residence permit in that Member State.

In 2020, on the basis of her son's Union citizenship, V applied under Article 20 TFEU for an EU/EEA document, which would certify her derived right of residence in the Netherlands.

However, the Netherlands authorities refused to issue such a certificate and ordered V to return immediately to Spain. Those authorities considered that Article 20 TFEU did not apply, because V's dependent child, who has EU citizenship, would not be required to leave the territory of the Union as a whole, but could instead join his mother in Spain where she has a right of residence.

V took the case to the District Court in The Hague, which referred questions to the European Court of Justice.

In today's opinion, Advocate General Tamara Čápetá revisits the *Ruiz Zambrano* case-law, ² under which static EU citizens, such as V's son, who have always lived in their Member State of nationality and have never resided in another EU Member State, are nevertheless protected on the basis of Article 20 TFEU.

She argues that citizenship rights include a right to decide not to move to another Member State. Therefore, if a child, who is an EU citizen, would be compelled to leave the territory of his or her Member State in order to accompany his or her TCN parent, who is required to leave that Member State, Article 20 TFEU grants that parent a derived right of residence in the State of the child's nationality so as to protect that child's right not to move. That is so, even if the minor EU citizen would not be compelled to leave the territory of the Union as a whole, but only the territory of his or her own State.

Before deciding whether to expel a third-country national parent, the competent authorities are required to verify whether the dependency between the child and his or her parent is such that that child would be compelled to accompany his or her parent if that parent were denied a right of residence in the Member State of which the dependent child is a national. In that assessment, those authorities must take into consideration the best interests

of the child and the right to family life, protected under the Charter of Fundamental Rights of the European Union.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 European Union law or the validity of a European Union 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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² Judgment of 8 March 2011, *Ruiz Zambrano* [C-34/09](#) (see also Press Release [No 16/11](#)).