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Court of Justice of the European Union

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Judgment in Case C-133/15

H.C. Chavez-Vilchez and Others v Raad van bestuur van de Sociale
verzekeringbank and Others

**A third-country national may, as the parent of a minor child who is an EU citizen,
rely on a derived right of residence in the EU**

The fact that the other parent, an EU citizen, could assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but is not in itself a sufficient ground to refuse a residence permit. It must be determined that there is not, between the child and the third-country national parent, such a relationship of dependency that a decision to refuse a right of residence to that parent would compel the child to leave the EU

Ms Chavez-Vilchez, a Venezuelan national, entered the Netherlands on a tourist visa. Her relationship with a Netherlands national led, in 2009, to the birth of a child who has Netherlands nationality. The parents and the child lived in Germany until June 2011, when Ms Chavez-Vilchez and her child were compelled to leave the family home. She has since then been responsible for the care of her child. She has stated that the child's father does not contribute to the child's support or upbringing. In the absence of a right of residence, her applications for social assistance and child benefit were rejected by the Netherlands authorities.

Seven other individuals, all third-country nationals, are in situations that are similar to that of Ms Chavez-Vilchez: they are mothers of one or more children who have Netherlands nationality, the fathers being of Netherlands nationality. Those children have all been acknowledged by the fathers, but live mainly or exclusively with their mothers. There are however differences with respect to the relationships of the parents and children in terms of custody rights and contributions to costs of support, the mothers' situations as regards their right of residence in the EU, and the situation of the minor children. Further, unlike the situation of Ms Chavez-Vilchez, the minor children of the seven other individuals have never exercised their right of free movement, in that they have resided since birth in the Member State of which they are nationals (that is, the Netherlands).

Proceedings having been brought before it in relation to the refusal of the Netherlands authorities to grant social assistance and child benefit to the mothers concerned, the Centrale Raad van Beroep (Higher Administrative Court, Netherlands) decided to refer questions to the Court of Justice. The referring court seeks to ascertain whether the individuals concerned may, as mothers of a child who is an EU citizen, acquire a right of residence under Article 20 TFEU (EU citizenship) in the specific circumstances of each case. If so, those individuals could be entitled, where appropriate, to receive social assistance or child benefit under the Netherlands legislation. The Centrale Raad van Beroep asks, more particularly, what importance is to be given to the fact that the father, an EU citizen, is staying in the Netherlands or in the EU.

In today's judgment, the Court states initially that the situation of Ms Chavez-Vilchez and her child, both of whom have exercised their right of free movement, must first be analysed in the light of Article 21 TFEU (the right of EU citizens to move and reside freely within the territory of the Member States) and of Directive 2004/38¹ (the objective of that directive being to facilitate the

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the EU 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 OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

exercise of the right to move and reside freely). It is for the Netherlands court to assess whether the conditions laid down by Directive 2004/38 were satisfied, and consequently whether Ms Chavez-Vilchez can rely on a derived right of residence. If not, her situation and that of her child must be examined, like the situations of the other individuals concerned, in the light of Article 20 TFEU.

In that regard, the Court recalls its case-law that Article 20 TFEU precludes national measures, including decisions refusing a right of residence to the family members of an EU citizen, **which have the effect of depriving EU citizens of the genuine enjoyment of the substance of the rights conferred by virtue of their status.**

In this case, if the mothers were compelled to leave the territory of the EU, that could deprive their children of the genuine enjoyment of the substance of those rights by compelling those children to leave the territory of the EU, a matter which it is for the Netherlands court to determine. In order to assess that risk, it is important to determine which parent is the primary carer of the child and whether there is in fact a relationship of dependency between the child and the third-country national parent. As part of that assessment, the authorities must take account of the right to respect for family life and the best interests of the child.

The fact that the other parent, a EU citizen, is actually able and willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but is not in itself a sufficient ground for a conclusion that there is not, between the third-country national parent and the child, such a relationship of dependency that the child would be compelled to leave the territory of the EU if a right of residence were refused to that third-country national. In reaching such a conclusion account must be taken, in the best interests of the child concerned, of all the specific circumstances, including 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.

As regards the burden of proof, a third-country national parent must provide evidence on the basis of which it can be assessed whether a decision to refuse him or her a right of residence would deprive the child of the genuine enjoyment of the substance of the rights attached to status as an EU citizen by obliging the child to leave the territory of the EU.

However, the national authorities must ensure that the application of national legislation on the burden of proof does not undermine the effectiveness of Article 20 TFEU. The national authorities must undertake the necessary inquiries to determine where the parent who is a national of that Member State resides. They must also examine whether that parent is actually able and willing to assume sole responsibility for the primary day-to-day care of the child. Further, they must examine whether there is such a relationship of dependency between the child and the third-country national parent that a decision to refuse a right of residence to the latter would deprive the child of the genuine enjoyment of the substance of the rights attached to his or her status as a EU citizen by obliging the child to leave the territory of the EU.

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.

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

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