



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-451/19 and C-532/19
Subdelegación del Gobierno en Toledo
(Residence of a family member - Insufficient resources)

A relationship of dependency capable of justifying the grant of a derived right of residence to the parent, who is a non-EU national, of a minor, who is a Union citizen, is presumed where that parent lives on a stable basis with the other parent, who is a Union citizen, of that minor

That relationship of dependency exists where a minor, who is a Union citizen, is forced to leave the territory of the European Union in order to follow his or her non-EU parent who, himself or herself, is forced to leave that territory following the refusal of a derived right of residence to his or her other minor child who is a non-EU national

XU (Case C-451/19), born on 19 September 2001 in Venezuela, has lived since 2004 in Spain with his mother, who is also a Venezuelan national and who has sole custody of her child. XU's mother holds a residence permit issued by the Spanish authorities. In 2014, she married, in Spain, a Spanish national who has never exercised his right to move freely within the European Union. The couple, who live together in a village in Toledo (Spain), had a child, a Spanish national, in 2009. In September 2015, the stepfather made an application for XU to receive a temporary residence permit as a family member of a Union citizen. The application was refused by the Spanish authorities on the ground that XU's stepfather had not established that he had sufficient resources for himself and his family members so as not to become a burden on the social security system. The appeal brought by XU's stepfather against that decision was upheld.

On 25 September 2015, QP, a Peruvian national (Case C-532/19), married a Spanish national who has never exercised her right to move freely within the European Union. QP and his wife are the parents of a girl who is a Spanish national born on 11 August 2012. QP made an application for a residence permit of a family member of a Union citizen and annexed to that application, inter alia, his wife's employment contract of indefinite duration and payslips. That application was refused on the ground that QP had a criminal record in Spain (namely two criminal convictions for driving a vehicle without a licence and a third for drink-driving) and on the ground that his spouse did not have sufficient financial resources for herself and for her family members. QP's appeal brought against that decision was upheld.

The Provincial Office of the Government in Toledo brought appeals before the High Court of Justice of Castilla-La Mancha (Spain) against the judgments of the courts of first instance which had upheld the appeals by XU and QP against the administrative decisions refusing the applications, for the benefit of those non-EU nationals, for a residence card of family members of a Union citizen.

The High Court of Justice of Castilla-La Mancha has doubts as to whether the automatic nature of the Spanish administrative practice complies with EU law, and as to the effects of that practice on Union citizens who could be forced to leave the territory of the European Union because of the existence of a relationship of dependency between them and their non-EU national family members. That court asks whether that is compatible with the **derived right of residence which, according to the Court of Justice, must be granted, in very particular situations, to non-EU nationals so as to avoid the EU national from being deprived of the genuine enjoyment of the substance of the rights conferred by the status of Union citizen, which would occur if he or she were forced to leave the territory of the European Union in order to follow his or her**

non-EU family member who was refused that right. The Spanish court therefore decided to seek guidance from the Court of Justice in that regard.

In today's judgment, the Court, reiterating that it had already responded to the same Spanish court in its judgment *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*,¹ holds that **EU law precludes applications for family reunification from being refused without there having been an examination as to whether there is a relationship of dependency** between the Union citizen and his or her family member **which, in the event of that family member being refused a derived right of residence, could force the Union citizen to leave the territory of the European Union.** The Court also confirms that **that relationship of dependency does not exist solely because the Union citizen and his or her non-EU spouse are required to live together under the obligations resulting from marriage** according to the law of the Member State of which the Union citizen is a national and in which the marriage was entered into.

Furthermore, where the Union citizen is a minor (as is the case for QP's daughter) the assessment of the existence of a relationship of dependency capable of justifying the grant of a derived right of residence to the parent, who is a non-EU national, of that child must be based on the taking into account, in the child's best interests, of all of the circumstances of the case. The Court states that, **where that parent lives on a stable basis with the other parent, who is a Union citizen, of that minor, there is a rebuttable presumption of such a relationship of dependency. Where the minor who is a Union citizen lives on a stable basis with both of his or her parents and where, therefore, they share the daily care of that child and the legal, emotional and financial responsibility for that child, that relationship of dependency may be presumed,** irrespective of the fact that the other parent has, as a national of Member State in which that family is established, an unconditional right to remain in that Member State. The fact remains that, even in that case, the Member States may refuse, under certain conditions, to grant a derived right of residence to that parent who is a non-EU national on grounds relating to public policy and the safeguarding of public security.

Next, the Court holds that a relationship of dependency, capable of justifying the grant of a derived right of residence for the minor child, who is a non-EU national, of the non-EU spouse of a Union citizen who has never exercised his or her right of free movement (as in XU's case at that time) exists where the marriage between that Union citizen and his or her spouse produces a child who is a Union citizen who has never exercised his or her right of free movement (as is the case for XU's half-brother), and where that Union citizen would be forced to leave the territory of the European Union if the minor child, who is a non-EU national, were forced to leave the territory of the Member State concerned. The non-EU parent staying with the non-EU minor child could be forced to accompany that child, which could also force his or her minor child, who is a Union citizen, to leave that territory.

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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¹ Judgment of the Court of 27 February 2020, [C-836/18](#), *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)*.