



According to the Court of Justice, a third-country national who has been the victim of acts of domestic violence committed by his or her spouse, who is a Union citizen, is not in a comparable situation to a third-country national who has been the victim of acts of domestic violence committed by his or her spouse, who is also a third-country national

Accordingly, any difference in treatment arising from those two situations is not in breach of equality before the law as enshrined in the Charter of Fundamental Rights of the European Union

In 2012, X, an Algerian national, joined his French wife in Belgium, where he was issued with a residence card of a family member of a Union citizen.

In 2015, he was forced to leave the matrimonial home because of acts of domestic violence which he suffered at the hands of his wife. A few months later, his wife left Belgium to move to France. Almost three years after that departure, X initiated divorce proceedings. The divorce was granted on 24 July 2018.

In the meantime, the Belgian State had terminated X's right of residence, on the ground that he had not adduced evidence that he had sufficient resources to support himself. According to the provision of Belgian legislation intended to transpose Article 13(2) of Directive 2004/38,¹ in the event of divorce or when the spouses no longer live together as a single household, the retention of the right of residence by a third-country national who has been the victim of acts of domestic violence committed by his or her spouse, who is a Union citizen, is subject to certain conditions, including, in particular, the requirement to have sufficient resources.

X brought an action against that decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), on the ground that there is an unjustified difference in treatment between the spouse of a Union citizen and the spouse of a third-country national residing lawfully in Belgium. In the event of divorce or separation, the provision of Belgian legislation transposing Article 15(3) of Directive 2003/86² makes the retention of the right of residence by a third-country national who has benefited from the right to family reunification with another third-country national and has been the victim of acts of domestic violence committed by that other third-country national subject only to proof of the existence of those acts.

The Conseil du contentieux des étrangers considers that, as regards the conditions for the retention, in the event of divorce, of the right of residence by third-country nationals who have been the victims of acts of domestic violence committed by their spouses, the regime laid down in Directive 2004/38 is less favourable than that laid down in Directive 2003/86. It has therefore asked the Court of Justice to rule on the validity of Article 13(2) of Directive 2004/38, in particular in the light of the principle of equal treatment laid down in Article 20 of the Charter of Fundamental Rights of the European Union ('the Charter').

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 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).

² Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

In its judgment, delivered by the Grand Chamber, the Court, in the first place, restricts the scope of its case-law concerning the scope of point (c) of the first subparagraph of Article 13(2) of Directive 2004/38, in particular the judgment in *NA*.³ In the second place, it does not find any factor of a kind such as to affect the validity of Article 13(2) of that directive in the light of Article 20 of the Charter.

Findings of the Court

Before carrying out an assessment of validity, the Court clarifies the scope of point (c) of the first subparagraph of Article 13(2) of Directive 2004/38, pursuant to which the right of residence is retained in the event of divorce where this is warranted by particularly difficult circumstances, such as having been the victim of acts of domestic violence during the marriage. The issue arises, in particular, as to whether that provision is applicable where, as in the main proceedings, divorce proceedings were initiated after the departure of the spouse who is a Union citizen from the host Member State concerned.

Contrary to its ruling in the judgment in *NA*, the Court considers that, in order to retain the right of residence on the basis of that provision, divorce proceedings may be initiated after such departure. However, in order to ensure legal certainty, a third-country national – who has been the victim of acts of domestic violence committed by his or her spouse who is a Union citizen and in relation to whom divorce proceedings have not been initiated before the departure of that spouse from the host Member State – **can rely on the retention of his or her right of residence only in so far as those proceedings are initiated within a reasonable period following such departure**. It is important to leave the third-country national concerned sufficient time to choose between the two options offered to him or her by Directive 2004/38 in order to retain a right of residence, which are **either the commencement of divorce proceedings for the purpose of enjoying a personal right of residence** under point (c) of the first subparagraph of Article 13(2) of that directive, **or his or her establishment in the Member State in which the Union citizen resides in order to retain his or her derived right of residence**.

Regarding the validity of Article 13(2) of Directive 2004/38, the Court concludes that that provision **does not result in discrimination**. Notwithstanding the fact that point (c) of the first subparagraph of Article 13(2) of Directive 2004/38 and Article 15(3) of Directive 2003/86 share the objective of ensuring protection for family members who are victims of domestic violence, the regimes introduced by those directives relate to **different fields**, the **principles, subject matters and objectives** of which are also **different**. In addition, the beneficiaries of Directive 2004/38 enjoy a **different status and rights of a different kind** to those upon which the beneficiaries of Directive 2003/86 may rely, and the **discretion** which the Member States are recognised as having to apply the conditions laid down in those directives is **not the same**. In the present case, it is thus, in particular, a **choice made by the Belgian authorities** in connection with the exercise of the **broad discretion** conferred on them by Article 15(4) of Directive 2003/86 which has led to the difference in treatment complained of by the applicant in the main proceedings.

Therefore, as regards the retention of their right of residence, third-country nationals who are spouses of Union citizens, have been the victims of acts of domestic violence committed by their spouses, and fall within the scope of Directive 2004/38, on the one hand, and third-country nationals who are spouses of other third-country nationals, have been the victims of acts of domestic violence committed by their spouses, and fall within the scope of Directive 2003/86, on the other, **are not in a comparable situation for the purposes of the possible application of the principle of equal treatment guaranteed by Article 20 of the Charter**.

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.

³ Judgment of 30 June 2016, *NA*, [C-115/15](#).

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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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