

C-256/11 Dereci [2011] ECR I-00000

Facts: The applicant entered Austria illegally and married an Austrian national by whom he had three children who are also Austrian nationals and who were minors at the time. His application for residence was rejected, and he was subject to an expulsion order. The national authority had refused to apply, in respect of the applicants in the main proceedings, a similar regime to that provided for in Directive 2004/38 for the family members of a Union citizen, on the ground that the Union citizen concerned has not exercised his right of free movement. The question as whether C-34/09 *Ruiz Zambrano* [2011] ECR I-01177 could work on these facts by analogy and grant the third-country nationals and their family members who are Union citizens, who possess Austrian nationality, and who have not exercised their right of free movement the right to live together.

Held: On the argument that this was a wholly internal situation, it was stated that the situation of a Union citizen who had not made use of the right to freedom of movement could not, for that reason alone, be assimilated to a purely internal situation.

And yet, the criterion relating to the denial of the genuine enjoyment of the substance of the rights conferred referred to situations in which the Union citizen has to leave not only the territory of the Member State of which he is a national but of the Union as a whole. Unlike C-34/09 *Ruiz Zambrano* [2011] ECR I-01177, there was no risk on these facts that the Union citizens would be deprived of their means and subsistence. Therefore, EU law did not preclude a Member State from refusing to allow a third country national to reside on its territory, when that third country national wanted to reside with a member of his family who is a citizen of the Union residing in that Member State, of which he has nationality, but who has never exercised his right to freedom of movement, provided that such refusal did not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union. This would be for the national court to verify.