



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SILES CABRERA v. SPAIN

(Application no. 5212/23)

JUDGMENT

Art 8 • Positive obligations • Family life • Refusal to grant a disabled child's father a residence permit for exceptional circumstances (social integration) for failing to satisfy the "sufficient means of subsistence" criterion without recourse to welfare benefits • Domestic decisions not lacking a legal basis and relevant legal provisions not unforeseeable in their application • Consideration by domestic courts of the applicant's personal and family situation, including his disabled son's situation • Other avenues available to the applicant to regularise his status • Fair balance struck between competing interests at stake • Wide margin of appreciation not overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 July 2025

FINAL

17/10/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Siles Cabrera v. Spain,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Kateřina Šimáčková, *President*,

María Elósegui,

Gilberto Felici,

Andreas Zünd,

Diana Sârcu,

Mykola Gnatovskyy,

Vahe Grigoryan, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 5212/23) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bolivian national, Mr Julio Cesar Siles Cabrera (“the applicant”), on 20 January 2023;

the decision to give notice to the Spanish Government (“the Government”) of the complaint under Article 8 concerning the refusal to grant a temporary residence permit and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 24 June 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the refusal to grant the applicant – the father of a disabled child – a residence permit for exceptional circumstances (social integration) on account of his failure to satisfy the criterion of “sufficient means of subsistence” by other means than the welfare benefits he was receiving.

THE FACTS

2. The applicant was born in 1968 and lives in Erandio. He was represented by Mr J.M. Pey Gonzalez, a lawyer practising in Bilbao.

3. The Government were represented by their Agent, Mr A. Brezmes Martínez de Villarreal.

4. The facts of the case may be summarised as follows.

I. BACKGROUND OF THE CASE

5. Since 2005 the applicant has been residing in Spain with his wife. Their son was born in 2012. The applicant’s family members hold Bolivian nationality.

A. State of health of the applicant's son

6. At the age of two and a half the applicant's son was diagnosed with autism spectrum disorder. He suffers from a pervasive developmental disorder. In 2017 he was diagnosed with agranulocytosis, an acute condition involving a severe and dangerous lowered white blood cell count (leukopenia, most commonly of neutrophils), thus causing neutropenia in the circulating blood. He has received in-patient treatment in local hospitals on several occasions.

7. According to a medical report of December 2017 prepared by a local hospital at the parents' request, the child had participated in a local early intervention programme. He was attending school and was receiving support from a local non-profit association for families of people with autism spectrum disorder. He was non-verbal, avoided eye-contact, did not tolerate minimal amounts of frustration and had difficulty being separated from his parents. He was slowly developing, had begun to show communicative intentions, could better tolerate separation and had been able to play alone and stay at school. The report concluded that he suffered from a serious illness requiring uninterrupted specialised care which was not available in Bolivia.

B. Situation of the applicant's family in Spain prior to his application for a temporary residence permit in 2018

8. In 2015 the applicant registered as a job seeker with a local association that assisted individuals and families at risk of social exclusion.

9. The parties did not provide information on the applicant's immigration status prior to his application for a residence permit described below. He submitted a copy of his passport with an entry stamp made in 2005 in a Madrid airport.

II. APPLICATION FOR A RESIDENCE PERMIT AND THE AUTHORITIES' REPLY

10. On 27 March 2018 the applicant applied for a residence permit for exceptional circumstances based on "social roots" (*arraigo social*), also known as social integration, under the domestic law provisions summarised in paragraphs 37-38 below. The application form specified that it was his "initial" request for a permit.

11. In support of his application he submitted, among other documents, a report "on social roots" (*informe de arraigo social*), dated 6 February 2018, to demonstrate his sufficient social integration (hereinafter "the social integration report", see paragraph 39 below for the relevant domestic provision). The Office of Family Policy and Diversity of the Employment and Social Policy Department of the Basque Government, the authority which

issued the report, issued a favourable opinion on the applicant's case. The authority took note of the documents concerning the applicant's housing situation, the link with his family members residing in Spain, the fact that he had taken Basque language courses from 2016 to 2017, as well as medical and other documents in respect of the applicant's son. The authority recommended exempting the applicant from the requirement to submit an employment contract in his application for a residence permit, based on his son's serious disability and his need for constant care. The authority referred to a certificate confirming that the applicant was in receipt of basic income (*renta básica*) consisting of a minimum guaranteed income ("the RGI") and a supplementary housing benefit in a total amount sufficient to guarantee his means of subsistence (*medios de vida*).

12. On 17 July 2018 the Government Sub-Delegation in the province of Biscay refused to grant the applicant the residence permit for exceptional circumstances based on social roots. The Sub-Delegation referred to sections 31(3) and (5) of Institutional Law no. 4/2000 of 11 January 2000 on the rights and freedoms of aliens in Spain and their social integration ("the LOEX") and Articles 47 and 124 of Royal Decree no. 557/2011 of 30 April 2011 (see paragraphs 32, 43 and 38-39 below). Having noted that the social integration report was not binding on it, the Sub-Delegation found that the applicant had failed to submit proof that he had his own means of subsistence (*medios de vida propios*). Instead, he had presented evidence that, since 2014, he had been in receipt of the basic guaranteed income and the supplementary housing benefit – a monthly allowance from the Basque Employment Service provided to cover the basic needs of individuals and families lacking sufficient resources.

13. The refusal decision further read that, given the lack of a permit to remain in Spain, the applicant had to leave the country within fifteen days of notification of the refusal, unless there were exceptional circumstances and it was demonstrated that he had sufficient financial means. In the latter case, the period could be extended up to ninety days, as provided for by Article 24 § 2 of Royal Decree no. 557/2011 (see paragraph 45 below). If he did not leave within the specified period, the provisions of the Royal Decree concerning irregular stay in Spain would apply.

III. COURT PROCEEDINGS

A. Proceedings before the first-instance court

14. The applicant appealed against the above-mentioned refusal to a court. He argued that the Sub-Delegation had failed to duly take into consideration the social integration report, which recommended that the authorities exempt him from the requirement to submit an employment contract, on account of his son's state of health. Referring to various medical documents, he argued

that his son's serious health condition (generalised developmental disorder and autism) and mental disability required constant parental care, despite the specialised care he was receiving. The applicant stated that he was unable to work because he had to take constant care of his son.

15. In support of his appeal, the applicant submitted a report of 6 March 2019 by Erandio social services. According to the report, the town's social services had known the applicant's family for years. In the first two years of their son's life, the parents' main problem had been their social and economic situation, as they (a) had depended on social benefits to cover their basic needs such as food, clothing and housing; (b) had had irregular employment, specifically in domestic jobs; and (c) had not had the necessary residence and work permits. After their son had been diagnosed with autism spectrum disorder, the family's situation became more complex owing to his special needs and the limited availability of relevant care programmes because of the parents' irregular status. In addition, their son was later diagnosed with cyclic neutropenia, a rare hereditary disease, leading to several hospitalisations. His condition required adequate and uninterrupted medical treatment and monitoring. The report emphasised the family's particular vulnerability and suggested that the son's condition could be an exceptional circumstance for granting a residence permit so that the family could adequately address his developmental needs.

16. The Sub-Delegation argued in reply that the applicant had failed to provide evidence that he was able to support himself financially, either through employment or by other means. The exemption from the requirement to submit an employment contract was only applicable in cases where the person concerned was able to demonstrate that he or she had other means of subsistence. Social welfare, such as the basic income and the housing benefit the applicant was receiving, could not be taken into account for those purposes. The authority noted that the applicant was not the only person responsible for the care of the child.

17. On 22 March 2019 the Bilbao Administrative Court of First Instance no. 5 dismissed the applicant's appeal, as he had failed to prove that he had sufficient means of subsistence, as required by Article 124 § 2 of the Royal Decree. He had also failed to provide an employment contract. While the social integration report suggested that he should be exempt from that requirement, he still needed to prove that he had sufficient means of subsistence. However, there was no evidence of such means in his case. In line with the High Court of Justice of the Basque Country's well-established approach, receiving the guaranteed income and housing allowance did not amount to proof of having one's own resources (the court cited at length the case-law summarised in paragraphs 47 and 51 below). The first-instance court further rejected as untenable the applicant's argument that he could not work because he had to care for his sick child. Firstly, the court noted that the child's mother also resided in Spain, and was apparently unemployed.

Secondly, the child had been born in 2012, but there was no evidence of any employment activity on the applicant's part since 2015, when he had registered as a job seeker.

B. Appeal proceedings

18. The applicant appealed against the judgment of 22 March 2019, arguing, in essence, that the first-instance court had incorrectly assessed the evidence and misinterpreted Article 47 of Royal Decree no. 557/2011 and section 31(3) of the LOEX. The first-instance judgment incorrectly stated that the applicant's financial resources did not meet the criteria set out in Article 124 § 2 of Royal Decree no. 557/2011 because they were social benefits, while the provision only required proof of sufficient means of subsistence, regardless of the source. He further maintained that the local authority had correctly suggested in the social integration report that he should be exempt from providing an employment contract owing to his son's disability, and given that he received social benefits in an amount sufficient to ensure his subsistence. Referring further to the social report submitted to the first-instance court (see paragraph 15 above) he was relying on the social worker's recommendation to grant him the permit to improve his child's and family's psychosocial situation. He argued that the residence permit would facilitate employment. Lastly, he pointed out that he had to act as a legal representative of his disabled son. If he or his child's mother were expelled on account of his or her irregular administrative status, his son would be left in a situation of helplessness. Referring to the domestic court's decision of 2019 to grant his son a temporary residence permit for exceptional circumstances on health grounds (see paragraph 28 below), the applicant argued that a refusal to grant a residence permit to a father – on whom the son depended and who was his legal representative – would breach both his and his son's rights, guaranteed, notably, by the Convention.

19. The respondent authority argued in reply that the first-instance judgment had been well reasoned and in accordance with the law. Despite the recommendation to waive the requirement of submitting an employment contract, the applicant had still failed to prove that he had his own financial resources for the period of stay requested. To obtain the requested permit, he had needed to prove that he had sufficient financial resources to remain in the country without having to work, so that he would not have to rely on social assistance and would not be a burden on the Spanish social security system. In cases of temporary residence without gainful activity, Article 124 § 2 of Royal Decree no. 557/2011 was to be read in conjunction with Article 47. Under Article 47 § 3 of the same Royal Decree, documents showing regular and sufficient income had to be produced. However, since 2014 the applicant's family had been relying solely on social assistance.

20. On 18 May 2020 the High Court of Justice of the Basque Country rejected his appeal and upheld the lower court's judgment, finding that the applicant had failed to meet the requirements for the residence permit for which he had applied.

21. In the appellate court's view, the key issue was whether the appellant had demonstrated sufficient means of subsistence as required by Article 124 § 2 (b) of Royal Decree no. 557/2011, in the context of his application for an initial temporary residence permit for exceptional circumstances based on social integration, without engaging in work activity. The court stressed that section 31(3) of the LOEX dealt with the granting of residence permits for exceptional circumstances, which was a means of regularising the status of foreign citizens who had been staying in Spain illegally, without requiring them to leave the Spanish territory to apply for the necessary permit. The appellate court also emphasised that, in order to enter or reside in Spain, foreigners had to demonstrate that they had sufficient means of subsistence. That requirement applied to entry into Spain, obtaining a residence permit without authorisation to work or family reunification residence permits (the court cited relevant sections of the LOEX). That requirement was also contained in the provisions of Royal Decree no. 557/2011 dealing with visa acquisition, entry into the national territory, extension of stay, entry of family members with a study visa, temporary residence permits without authorisation to work, renewal of residence permits and family reunification. The appellate court extensively quoted its previous case-law (see paragraphs 47-52 above) to the effect that it was important for a foreign national to provide an employment contract when applying for a temporary residence permit for social integration reasons (social roots). Even though an exception from submitting a contract could be made, an applicant still had to prove that he or she had his or her own means to meet his or her needs in Spain, without burdening the public treasury. The welfare benefits would meet that requirement only in cases of true social integration of the foreign national, where the receipt of such benefits was circumstantial and consequent to a temporary loss of his or her own means of subsistence.

22. The appellate court upheld the first-instance judge's findings, holding that there had been no serious errors or illogical assessment therein. The appellate court noted that the recommendation for exemption from providing an employment contract had not absolved the applicant from the requirement to prove that he had sufficient means of subsistence. However, he had failed to submit such proof, only referring to his right to social benefits. The appellate court also noted that, in order to justify his inability to work, the applicant had relied on the need to take care of his son. The court found that argument untenable. Firstly, the child's mother also lived in Spain and did not work. Secondly, the child had been born in 2012, but the applicant had no record of any work activity since 2015, when he had registered as a job seeker with the association S. Accordingly, the appellate court held that the

application had been correctly rejected as the requirement of sufficient financial resources had not been met.

C. Subsequent proceedings

23. The applicant lodged a cassation appeal against the appellate court's judgment.

24. On 20 July 2021 the Contentious-Administrative Chamber of the Supreme Court dismissed the appeal for lack of objective cassational interest.

25. Subsequently, the applicant lodged an *amparo* appeal on the same grounds as in the earlier proceedings.

26. On 20 September 2022 the Constitutional Court rejected the appeal for a failure to justify its constitutional relevance.

IV. OTHER RELEVANT INFORMATION

A. Social report of 29 December 2023

27. The applicant submitted a social report of 29 December 2023 by a social worker from the local town council (apparently prepared at the request of the applicant's lawyer) which summarised, notably, the following most recent information on the applicant's family situation.

(i) The applicant's son, aged 11 at the time, had a high degree (83%) of dependency and was 89% disabled. He required therapeutic and pharmacological treatment and monitoring of his development. He was also in need of constant care and supervision, which was difficult to combine with "other work activities" that would "allow for flexible working hours".

(ii) Until the age of six, the child had benefitted from a provincial early stimulation programme. At the time of the preparation of the report (2023), the child was attending school within the *Aula Estable* ("stable classroom") programme. According to publicly available sources, *Aula Estable* is an inclusive educational programme for students with various disabilities or pervasive developmental disorders who attend special education facilities, providing specific support tailored to a student's individual needs in a standardised environment, that is, a regular school.

(iii) Owing to the parents' irregular status, the family was unable to receive various social benefits for months, or to participate in a social housing rental programme. They did not have support from family or friends. The applicant's son was then issued a residence permit for exceptional circumstances on health grounds, and the applicant's wife for training purposes. Nevertheless, the family remained in a vulnerable social and economic situation, notably, on account of the father's lack of a residence permit.

(iv) Despite the progress made, the family was receiving the minimum guaranteed income (RGI). Furthermore, they were in receipt of yearly financial assistance from local social services to pay for their son's treatment, as well as support from the town's social, educational and psychological intervention team. That team was looking for an alternative housing solution for the family and was helping them with paperwork.

B. Latest information on the applicant's and his family members' immigration status and whereabouts

28. On 3 April 2019 the Bilbao Administrative Court of First Instance no. 5, sitting in the same single-judge composition as in the applicant's case (see paragraph 17 above) granted the applicant's son a temporary residence permit for exceptional circumstances on humanitarian grounds, as he was suffering from a serious illness. The permit was issued under Article 126 of Royal Decree no. 557/2011 (temporary residence based on humanitarian grounds for health reasons, see paragraph 41 below), and was apparently renewed yearly. On 19 October 2023 the Government Sub-Delegation in the province of Biscay granted the applicant's son a temporary residence permit for exceptional circumstances, valid until 19 May 2024, on the same grounds. According to the applicant's observations dated July 2024, a request for Spanish nationality (citizenship by residence for a person born in Spain) had been pending in respect of the applicant's son as of an unspecified date. The parties did not provide further information on the status of the application.

29. On 31 August 2023 the applicant's wife was granted a residence permit for exceptional circumstances for training purposes, with no right to work, based on Article 124 § 4 of Royal Decree no. 557/2011 (see paragraph 40 below) and valid until 30 August 2024.

30. According to the social report of December 2023 referred to by the applicant in his latest submissions (see paragraph 27 above), the family - including the applicant - continue to live in Erandio, Spain.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Spanish Constitution

31. Under Article 41 of the Constitution, the public authorities are to maintain a public social security system for all citizens guaranteeing adequate social assistance and benefits in situations of hardship, especially in the event of unemployment. Supplementary assistance and benefits are optional.

B. Institutional Law no. 4/2000 of 11 January 2000

1. Temporary residence permits

32. Under section 31 of Institutional Law no. 4/2000 of 11 January 2000 on the rights and freedoms of aliens in Spain and their social integration (“the LOEX”), a temporary residence permit authorises the holder to remain in Spain for a period of more than ninety days and less than five years. Permits that are valid for less than five years may be renewed at the request of the interested party, depending on the circumstances that led to their issuance. The initial duration of temporary residence permits and their subsequent renewals are determined by section 31(1) of the LOEX. The initial temporary residence permit not entailing authorisation to work should be granted to foreign nationals who have sufficient means for themselves (*de medios suficientes para sí*) and, where applicable, for their families. The criteria for determining the sufficiency of said means are established by section 31(2) of the LOEX. A temporary residence permit may be granted on the grounds of being settled in the country (*situación de arraigo*), as well as for humanitarian reasons, co-operation with the justice system or other exceptional circumstances determined by section 31(3) of the same regulation. A foreign national must not have a criminal record in Spain or in his or her previous countries of residence for offences existing in the Spanish legal system and must not be on the list of persons banned in countries that have an agreement with Spain (section 31(5)).

33. If a person applies for residence through integration, the autonomous communities issue a social integration report on the foreign national whose habitual residence is in their territory. That report takes into account the period of stay, the possibility of having housing and means of subsistence, ties with family members residing in Spain and integration efforts through the monitoring of socio-occupational and cultural integration programmes (section 68(3) of the LOEX).

2. Removals

34. Section 28(3)(c) of the LOEX (as in force both at the time of the events and at present) provides that a foreign national must leave Spanish territory in the event of an administrative refusal of an application made by that foreign national to continue to stay in that territory, or in the absence of authorisation to stay in Spain.

35. Section 53(1)(a) of the LOEX defines as a “serious” offence “being unlawfully present on Spanish territory, on the ground that the person concerned has not obtained an extension of permission to stay or a residence permit”. A serious offence is punishable with a fine (section 55(1)(b) of the LOEX). Where an offender is a foreign national and commits a “serious” offence within the meaning of the above-mentioned section 53(1)(a) of the

LOEX, having regard to the principle of proportionality, it is possible to order his or her removal from Spanish territory instead of a fine, following the appropriate administrative procedure and by means of a reasoned decision which includes an assessment of the facts which constitute the offence. The penalties of expulsion and a fine are mutually exclusive (section 57(1) and (3)).

36. Removals may be ordered in a “priority” or an “ordinary” procedure. In particular, if the priority procedure is applied, the removal order must be enforced immediately (section 63(7)). The decision ordering removal, made under the ordinary procedure, includes a voluntary compliance period for the person concerned to leave the national territory, which may be further extended depending on the circumstances of each case, for example, the length of stay, the existence of dependent children attending school and the existence of other family and social ties (section 63a(2) of the LOEX).

C. Royal Decree no. 557/2011 of 20 April 2011

1. Temporary residence permits for exceptional circumstances

37. In exceptional circumstances, a temporary residence permit may be granted to foreign nationals who have “roots” or are settled in the country (*situación de arraigo*), as well as in cases of international protection, for humanitarian reasons, or based on co-operation with public authorities, or for reasons of national security or public interest (Article 123 of the Royal Decree).

38. Under Article 124 of the Royal Decree, temporary residence may be authorised for reasons of employment (*arraigo laboral*), social roots (*arraigo social*) or family roots (*arraigo familiar*) if the relevant criteria are met. Under Article 124 § 2 of the Royal Decree (as in force between 2011 and 16 August 2022), authorisation to temporarily reside in Spain based on “social roots” could be granted to a foreign national who had resided in Spain continuously for no less than three years, if he or she: (a) had no criminal record in Spain or in his or her country of origin or in the country or countries in which he or she had resided for the last five years; (b) had an employment contract for a period of no less than one year; and (c) had family ties with other resident foreigners or had submitted a social integration report to prove his or her social integration, issued by the authorities of the region where the person habitually resided. Family ties referred exclusively to spouses or registered partners, as well as first-degree ascendants and descendants.

39. Under the same Article 124 § 2 of the Royal Decree, the social integration report had to detail the duration of residence, financial resources, family ties in Spain and integration efforts. The relevant municipality might recommend waiving the requirement for an employment contract, provided that a foreign national was able to demonstrate that he or she had sufficient financial resources (*medios económicos suficientes*). If the requirements of

Article 105 § 3 of the Royal Decree (see paragraph 44 above) were met, it might be argued that the financial means were derived from an activity carried out on a self-employed basis.

40. Under Article 124 § 4 of the Royal Decree, introduced in 2022 and as in force in 2023 (when the relevant permit was granted to the applicant's wife), foreign nationals were able obtain a twelve-month residence permit in Spain for training purposes if they had lived in Spain continuously for at least two years, had no criminal record and undertook training for employment, to obtain a certificate of professional qualification required for a specific job or to broaden or update professional competences and skills. The permit could be further extended for another twelve months. Having completed the training, an applicant could apply for a residence and work permit with an employment contract guaranteeing at least the minimum wage; a two-year work permit would then be granted.

41. Article 126 of Royal Decree no. 557/2011 concerns, notably, temporary residence permits for humanitarian reasons for foreign nationals suffering from serious illnesses requiring healthcare not available in their country of origin.

42. According to paragraph 4 of the First Additional Provision of the Royal Decree, when economic, social or employment circumstances make it advisable (*lo aconsejen*), and in non-regulated cases of special relevance (*en supuestos no regulados de especial relevancia*), the Council of Ministers is able to issue instructions for temporary residence and work permits based on economic, social or employment needs, following proposals and reports from relevant authorities. Under the same provision *in fine*, the head of the State Secretariat for Immigration and Emigration, following a report from the head of the State Secretariat for Security, “may grant individual temporary residence authorisations in exceptional circumstances not provided for” in the Royal Decree.

2. Financial resources

43. Article 47 of the Royal Decree deals with the financial resources necessary to obtain a temporary residence authorisation. It provides that foreign nationals who wish to reside in Spain without carrying out employment or gainful activity must have sufficient financial means for the period of residence they are applying for, or prove that they have a source of regular income for themselves and, if applicable, their family, in the specific minimum amounts specified in the provision. To demonstrate that an individual has sufficient financial resources, he or she must submit documents proving regular income or asset ownership. Availability of resources may be proven by any legally admissible evidence, including, for instance, title deeds, certified cheques or credit cards accompanied by a bank statement confirming the amount available as credit. .

3. *Work-related requirements for temporary residence*

44. Article 105 § 3 of the Royal Decree, as in force between 2011 and 2022, set out the work-related requirements for the granting of initial temporary residence permits and self-employed work permits, such as: compliance with the domestic law for nationals when setting up and operating the planned activity; having the legally required professional qualifications or sufficient experience in the professional activity, and, where required, membership of a professional association; being able to prove the adequacy of the investment planned for the project and its impact on job creation; having sufficient economic resources for maintenance and accommodation; and payment of the fee for the self-employment permit.

4. *Mandatory departures and removals*

45. Under Article 24 (“Mandatory departures”) of Royal Decree no. 557/2011 of 20 April 2011 implementing the above-mentioned Institutional Law no. 4/2000 (as in force on 17 July 2018 – the date of the initial administrative refusal of the application for the residence permit), if a person lacks authorisation to stay in Spain, either because he or she does not meet or has ceased to meet entry or stay requirements, or owing to administrative rejection of an application for an extension of stay, residence permit or other necessary documents, the administrative decision will include a warning (*la advertencia*) about the mandatory nature of his or her departure from the country (Article 24 § 1). The compulsory departure must occur within the period specified in the decision rejecting the application, or within a maximum of fifteen days from the notification of the rejection decision, unless there are exceptional circumstances and it has been demonstrated that he or she has sufficient financial means. In such cases, the period may be extended up to ninety days. If the departure does not occur within the specified period, the provisions of section 53(1)(a) of the LOEX, categorising irregular stay in Spain as a “serious offence” (see paragraph 35 above), will apply (Article 24 § 2 of the Royal Decree). If a foreign national leaves Spanish territory in accordance with the above-mentioned provisions, he or she should not be refused entry at a later point and may return to Spain in accordance with the rules governing access to Spanish territory (Article 24 § 3 of the Royal Decree).

46. Article 241 of the Royal Decree provides that if, in a case dealt with under the “priority procedure” and falling under section 53(1)(a) of the LOEX (see paragraph 35 above), a foreign national proves that he or she had applied for a temporary residence permit for exceptional circumstances within the meaning of section 31(3) of the LOEX (see paragraph 32 above) before the case was opened, the competent authority should request a report on the status of the application. If the applicant does not meet the requirements for the residence permit, the authority will decide whether to continue with the

expulsion proceedings or close the case. If the authority decides to continue the proceedings, the case should be dealt with using the ordinary procedure (Article 241 § 1). If, during the processing of the request for a residence permit for exceptional circumstances, it is established that an expulsion order is pending against the applicant, that measure should be revoked if the application for a residence permit is granted. If the authority deciding on the permit is different from the one that issued the expulsion measure, it will request the revocation of the sanction (Article 241 § 2). Those criteria are also applicable if the application for a residence permit for exceptional circumstances was initially rejected but there are clear indications that the permit should be granted (Article 241 § 3 of the Royal Decree).

II. CASE-LAW OF THE HIGH COURT OF JUSTICE OF THE BASQUE COUNTRY

A. Judgment no. STSJ PV 2687/2009 of 24 February 2009

47. A judgment of 24 February 2009 (no. STSJ PV 2687/2009, case no. 494/2007) of the High Court of Justice of the Basque Country concerned the refusal of a renewal of a temporary residence permit for family reunification. The court stressed that the right to social assistance did not generally fulfil the legal requirement (*no integra ... el requisito legal*) of having sufficient means to support a family member following their reunification. However, if the foreign national had a genuine employment record, and the lack of means was temporary, the requirement might be exceptionally considered met. The requirement for sufficient financial resources was outlined in the Schengen Agreement and the Schengen Borders Code, which stated that for stays of up to three months, foreign nationals had to have adequate means of subsistence for their stay and return. Proof of sufficient means could include cash, travellers' cheques, credit cards and declarations of invitation or hosting. Council Directive 2003/86/EC on family reunification also required proof of fixed and regular resources to maintain oneself and family members without relying on social assistance. That requirement was a key element in immigration law to prevent overburdening the social assistance system, and applied in cases of entry, stay extension, temporary residence permits, renewals, family reunification and other cases. In sum, having sufficient economic resources meant not being in a situation of need (which was the basis for any welfare benefit according to Article 41 of the Constitution, see paragraph 31 above).

48. The domestic court further noted that the proof of sufficient means of subsistence was an "ambiguous (*indeterminado*) legal concept", as it depended on the circumstances of a specific case. With reference to its earlier case-law, the domestic court noted that receipt of social assistance or non-contributory benefits did not automatically mean an individual did not meet

the “sufficient means” requirements. Instead, the key element of assessment was whether the person had economic resources demonstrating his or her sufficient social integration. The social integration of foreigners was the legal interest which emerged from the very wording of Institutional Law no. 4/2000. Paid employment was clearly covered by the “sufficient means” legal concept in question (the court categorised that situation as falling within “the area of positive certainty”). Conversely, the cases of migrants who, despite being of age and able to work, had as their only means of subsistence the social assistance they received, obviously fell outside the concept (the court addressed those situations as being in the “area of negative certainty”), as such a situation clearly undermined the path to social integration through employment, the cornerstone of the Spanish migration system. Lastly, between those two “areas”, there was an area of uncertainty, where the “proof of sufficient means of subsistence” should be interpreted on a case-by-case basis. The court found that the applicant in the case under consideration did not have sufficient means of subsistence, as she needed social benefits to cover her family’s needs, and that need was not circumstantial or sporadic, but habitual.

B. Judgment no. STSJ PV 551/2015 of 27 January 2016

49. In judgment no. STSJ PV 551/2015 of 27 January 2016, the same domestic court ruled on a case where the applicant had relied on her being in receipt of the RGI (the minimum guaranteed income) and on the social integration report’s recommendation to exempt her from the requirement to submit an employment contract. The applicant argued that the “sufficient means of subsistence” was a vague legal concept, and that all circumstances - including, in her case, her illness preventing her access to the labour market - were to be considered. In rejecting her claim, the domestic court reasoned that the authority issuing the social integration report could recommend that a foreign national be exempted from the requirement to have an employment contract if he or she had sufficient economic resources, that is personal means enabling the individual to meet his or her needs in Spain without becoming a burden on public finances. If the conditions set out in Article 105 § 3 of Royal Decree no. 557/2011 (see paragraph 44 above) were met, the foreign national could argue that the economic resources came from an activity carried out as a self-employed person. The RGI did not qualify as the applicant’s personal resources.

C. Judgment no. STSJ PV no. 905/2014 of 16 March 2016

50. In judgment no. STSJ PV no. 905/2014 of 16 March 2016, the same domestic court noted that “in the general regime of the LOEX, a key element of the policy to regulate migratory flows and prevent the social welfare

system from becoming saturated or overloaded was that a foreign national who intend[ed] to come Spain [had to have] sufficient means of subsistence”, proved by an employment contract or consisting of assets or resources of his or her own, guaranteeing the foreign national’s subsistence without resorting to welfare benefits.

D. Judgment no. STSJ PV 233/2016 of 27 January 2017

51. Judgment no. STSJ PV 233/2016 dated 27 January 2017 was given by the High Court of Justice of the Basque Country in a case where an applicant had relied on his receipt of the basic income, and a local authority had recommended exempting him from submitting an employment contract. The applicant argued that he was ill and therefore prevented from accessing the labour market. His application had been refused. The court upheld the refusal, noting that the income he had referred to had not been his own financial means, but social benefits allowing him to meet his needs. However, it was important for a foreign national to provide an employment contract when applying for a temporary residence permit on the grounds of social roots, especially through social integration. Even though an exemption from submitting an employment contract could be made, an applicant still had to submit evidence that he or she had his or her own means to meet his or her needs in Spain, without burdening the public treasury. The court stressed that the application had been made under Article 124 § 2 of the Royal Decree, and not under Article 126 of the Decree (health grounds, see paragraph 41 above).

E. Judgment no. STSJ PV 595/2017 of 1 February 2017

52. Judgment no. STSJ PV 595/2017 of the same court dated 1 February 2017 also concerned the refusal of an application for a residence permit by an applicant who had also relied on his being in receipt of the basic guaranteed income to fulfil the “sufficient means” criterion. The domestic court stressed that welfare benefits would only meet that requirement if the foreign national could demonstrate true social integration, where the receipt of such benefits was circumstantial and consequent to a temporary loss of his or her own means of subsistence. The court found that the applicant in the case under consideration lacked his own financial resources and frequently relied on social benefits to meet his needs. It was therefore lawful to include his case in the “area of negative certainty” of the legal concept of “sufficient means of subsistence” (see paragraph 48 above).

F. Other relevant case-law cited by the domestic courts

53. The High Court of Justice of the Basque Country reached similar findings in several other cases, including in judgment no. STSJ PV 522/2016 of 30 November 2016 (case no. 1001/2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

54. The applicant complained that the refusal to grant him a temporary residence permit for exceptional circumstances based on social integration had amounted to a violation of his family life in breach of Article 8 of the Convention. That provision reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

55. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

56. The applicant argued that the refusal to grant him a residence permit for exceptional circumstances had adversely affected his right to respect for family life, namely that the refusal had *de facto* prevented him from living together with his minor son and taking care of him. He argued that the refusal had lacked legal basis. As demonstrated in the court proceedings, he had had sufficient financial resources within the meaning of the relevant laws, that is, the benefits he had been receiving at the time. His case (a temporary residence permit on the grounds of being settled in the country) fell under section 31(3) of Institutional Law no. 4/2000, and not under section 31(2) concerning an initial permit for temporary residence which contained the requirement for applicants to have “sufficient means for themselves” (see paragraph 32 above). The applicable Article 124 § 2 of Royal Decree no. 557/2011 used

the term “sufficient financial resources” (see paragraph 39 above), and neither the LOEX, nor the Royal Decree, nor any other domestic provision (see paragraphs 32 and 38 above), explained the exact meaning of that term, or allowed for distinction between different origins of financial resources.

57. He further argued that the interference had not pursued any of the legitimate aims within the meaning of Article 8 § 2 of the Convention and that the interference had not been necessary in a democratic society. The general interest of controlling migration should not have taken precedence over the best interests of the child, as well as the applicant’s right to private and family life. The applicant argued that the courts had failed to give due weight to the best interests of the child – his severely disabled minor son suffering from a mental illness. Citing various European and international law instruments, as well as the Court’s case-law, the applicant stressed that the right to live together to develop normal family relations was an essential component of family life. Once the existence of a family link was established, the State had to act in such a way as to allow that link to develop. Even though Article 8 did not guarantee a right to a particular type of residence permit, the solution proposed by the authorities should nonetheless allow the individual to exercise his rights to private and family life without obstacles (he referred to *B.A.C. v. Greece*, no. 11981/15, § 35, 13 October 2016). Nevertheless, the authorities, while granting the right of residence to the applicant’s disabled child, had denied that right to the applicant himself. Instead of thoroughly assessing the specific circumstances of the case, and notably the family’s particularly vulnerable situation, the authorities had adopted a formalistic approach to his case.

58. Lastly, in the applicant’s view, the authorities had failed to act diligently in a case concerning a highly vulnerable person, as required by the principle of good administration. If they had found that the applicant’s case could have been covered by another type of residence permit more suitable for his situation (at time of his application for the permit in 2018), they should have advised him accordingly and redirected him to the relevant procedure. The fact that the applicant’s wife had received a residence permit for training purposes, under the law which had been in force since 2022, was immaterial, as the best interests of the child and his rights should take precedence in the determination of the case before the Court.

(b) The Government

59. The Government conceded that the refusal of the temporary authorisation to reside in the national territory where his child and spouse resided had amounted to an interference with the applicant’s rights protected by Article 8. However, the interference had been in accordance with law, namely with section 31 of Institutional Law no. 4/2000 (see paragraph 32 and Articles 47 and 124 of Royal Decree no. 557/2011 (see paragraphs 43 and 38 above), and was in compliance with the European legislation setting out the

“sufficient means of subsistence” criterion. The interference had also been necessary in a democratic society and proportional to the legitimate aim pursued. The national authorities had not exceeded the margin of appreciation afforded to them. The applicant had not fulfilled one of the requirements for the specific type of residence permit for which he had applied; receiving income from social assistance had not been sufficient to prove that he had sufficient means of subsistence of his own. The Government stressed that the requirement to demonstrate sufficient means of subsistence was a key element of the policy to regulate migratory flows and prevent the social welfare system from becoming overloaded. The refusal in the applicant’s case had not been based on formalistic procedural grounds. The authorities had taken into consideration the relevant circumstances of the case and the situation of the applicant’s family. For instance, he had been granted an exemption from the obligation to submit an employment contract, which had not absolved him, however, from the obligation to prove that he had sufficient means of subsistence. They had correctly noted that the applicant’s spouse had been unemployed (the Government referred in that regard to the residence permit for training purposes issued to his wife) and therefore she had been able to take care of their son. The Government pointed out that the refusal to grant the applicant the requested residence permit had not affected the administrative status of his son, who had been residing in Spain lawfully, nor had it “forced him to leave the country”; indeed, the son had lived with his parents at all times, irrespective of the refusal of the residence permit issued in respect of the father.

60. Lastly, they pointed out that the applicant could have applied for other types of residence permits, such as a temporary residence permit for exceptional circumstances not set out in the Royal Decree (they referred to paragraph 4 of the First Additional Provision of Royal Decree no. 557/2011 *in fine*, see paragraph 42 above). They argued that he could have made such an application as the father of a child having a residence permit issued on health grounds, owing to a serious illness; and that the application procedure was quite straightforward, conditional on submission of a standardised form, a criminal record certificate and documents to a competent authority. They further argued that the applicant could have filed a request for a residence permit for training purposes, similar to that granted to his wife (see paragraphs 29 and 40 above). However, for an unexplained reason, he had failed to do so. While granting any such permit was within the competent authority’s discretion, the applicant had not argued that those or any other alternative ways to regularise his situation in Spain had been unavailable to him.

2. *The Court's assessment*

61. It was not disputed between the parties, and the Court is satisfied that the relationship between the applicant and his son and wife constituted “family life” within the meaning of Article 8 § 1 of the Convention.

(a) **General principles**

62. The Court reiterates that, as a matter of well-established international law and subject to their treaty obligations, States have the right to control the entry, residence and expulsion of aliens. The Convention does not guarantee the right of an alien to enter or to reside in a particular country (see, for example, *De Souza Ribeiro v. France* [GC], no. 22689/07, § 77, ECHR 2012, and *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 114, 15 October 2020), nor does it entail a general obligation for a State to authorise the residence of a foreign national on its territory (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 100, 3 October 2014). Where a Contracting State tolerates the presence of an alien in its territory, thereby allowing him or her to await a decision on an application for a residence permit, an appeal against such a decision or a fresh application for a residence permit, such a Contracting State enables the alien to take part in the host country's society, to form relationships and to create a family there. However, this does not automatically entail that the authorities of the Contracting State concerned are, as a result, under an obligation pursuant to Article 8 of the Convention to allow him or her to settle in their country. In a similar vein, confronting the authorities of the host country with family life as a *fait accompli* does not entail that those authorities are, as a result, under an obligation pursuant to Article 8 of the Convention to allow the applicant to settle in the country. The Court has previously held that, in general, persons in that situation have no entitlement to expect that a right of residence will be conferred upon them (*ibid.*, § 103). Nor can Article 8 be construed as guaranteeing, as such, the right to obtain a residence permit and, *a fortiori*, a particular type of a residence permit; the choice of permit is in principle a matter for the domestic authorities alone (see among many others, *Sisojeva and Others v. Latvia* (striking-out) [GC], no. 60654/00, § 91, ECHR 2007-I, with further references; *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 51, 7 December 2007; and *Dremlyuga v. Latvia* (dec.), no. 66729/01, 29 April 2003).

63. However, while the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in effective ‘respect’ for family life (see *Jeunesse*, cited above, § 106). In a case which concerns family life as well as immigration, the extent of a State's obligations will vary according to the particular circumstances of the persons involved and the general interest (*ibid.*, § 107). The Court reiterates that the boundaries between the State's

positive and negative obligations under Article 8 do not lend themselves to precise definition and the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see among others, *Jeunesse*, cited above, § 106; *T.C.E. v. Germany*, no. 58681/12, § 56, 1 March 2018; *Paposhvili v. Belgium* [GC], no. 41738/10, § 221, 13 December 2016; and, as a recent authority, *Martinez Alvarado v. the Netherlands*, no. 4470/21, § 54, 10 December 2024). Factors to be considered in the context of cases which concern not only family life but immigration, are set out in *Jeunesse* (cited above, §§ 107-109, with further references). In particular, where children are involved, their best interests must be taken into account. On this point, the Court has found in *Jeunesse* that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance. Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it (see, in so far as relevant, *Jeunesse*, cited above, § 109, with further references).

64. The domestic courts must put forward specific reasons in the light of the circumstances of the case, not least to enable the Court to carry out the European supervision entrusted to it. Where the reasoning of domestic decisions is insufficient, and the interests in issue have not been weighed in the balance, there will be a breach of the requirements of Article 8 of the Convention. Where, on the other hand, the domestic courts have carefully examined the facts, applied the relevant human rights standards consistently with the Convention and the Court's case-law, and have adequately weighed up the individual interests against the public interest in a case, the Court would require strong reasons to substitute its own view for that of the domestic courts (see *M.A. v. Denmark* [GC], no. 6697/18, § 149, 9 July 2021, with further references).

(b) The applicant's situation in Spain and the Court's approach

65. The applicant had been living in Spain since 2005 (see paragraph 5 above), that is for about thirteen years, by the time of his application for a residence permit. The parties did not provide details on the applicant's entry into the territory of Spain. However, it is not disputed – and it can also be inferred from the case material, including the social reports (see paragraphs 15 and 27 above) – that he had been in an irregular situation at least up until the time his child was born, and had remained in that situation

for years preceding his “initial” application for a residence permit (see paragraph 10 above) after several years of actual residence.

66. His stay in Spain cannot therefore be equated with a lawful stay where the authorities have granted an alien permission to settle in their country (see *Jeunesse*, cited above, § 102; and contrast *Mirzoyan v. the Czech Republic*, nos. 15117/21 and 15689/21, § 77, 16 May 2024).

67. The Court further notes that the initial refusal of the residence permit in 2018 contained an indication that the applicant had to leave Spain within a specified period (see paragraph 13 above). However, in the absence of any evidence to the contrary, it further appears that no removal procedures, let alone a final removal order, were pending in respect of him at the time of the examination of the case by the Court. As transpires from the latest social report, the applicant was living in Spain with his family in December 2023 (see paragraph 27 above), that is, years after his request for a residence permit had been rejected in the domestic proceedings. The applicant was therefore effectively able to remain in Spain throughout the period concerned. He did not substantiate before the Court that he was facing any real and imminent risk of removal from Spain (see, *mutatis mutandis*, *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 49, 7 December 2007). Nor has it been argued that it was only a matter of time before he was compelled to leave (compare *Mirzoyan*, cited above, § 79). Furthermore, having regard to the relevant domestic provisions summarised in paragraphs 34-36 and 45-46 above, the Court notes that the application of a measure such as his mandatory removal is not automatic; it is a matter of the authorities’ discretion, implies a prior examination of all the relevant aspects of the case in separate proceedings and is amenable to appeal. In addition, should a removal order be issued against the applicant in the meantime, he would, according to domestic law, be able to challenge it before the courts raising the relevant arguments, including under Article 8 of the Convention, and the domestic authorities would be able to examine such submissions.

68. Furthermore, turning to the applicant’s argument that the refusal of the residence permit would have repercussions on the child’s best interests, the Court accepts that mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of “family life” within the meaning of Article 8 of the Convention (see, *inter alia*, *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, § 125, 1 December 2009). However, as things stand now, there has been no interruption of the applicant’s family life. It is not disputed that since his early years, including the period prior to the regularisation of his own immigration status in 2019 (see paragraph 28 above) the applicant’s son has been receiving specialised healthcare and assistance adequate for his undoubtedly serious condition; that he has attended school, and that he has also had access to social benefits and other essential social services in Spain (see paragraphs 7, 15 and 27 above). The applicant was unable to substantiate why, once his application for a residence

permit had been refused, he had no longer been able to act as a legal representative of the child or take care of him.

69. Lastly, even assuming that the refusal to grant him a residence permit could at some point in future have made his continued enjoyment of his family life in Spain uncertain and prone to be interrupted if mandatory removal proceedings were initiated in respect of him (compare, in so far as relevant, *Mirzoyan*, cited above, § 79), the Court notes that the domestic proceedings leading up to the present application concerned only the issue of whether the applicant was entitled to a specific temporary residence permit for exceptional circumstances based on “social roots” (through social integration).

70. Accordingly, the Court considers that the question to be examined in the present case is whether, having regard to the applicant’s personal circumstances, by refusing to grant the applicant’s request, as it was formulated, the respondent State failed to comply with a positive obligation under Article 8 of the Convention (see, *mutatis mutandis*, *T.C.E. v. Germany*, no. 58681/12, § 54, 1 March 2018; *Jeunesse*, cited above, § 105, with further references; and *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 38, ECHR 2006-I).

(c) Whether the authorities complied with the positive obligation under Article 8 of the Convention in the present case

71. The Court notes that the applicant’s argument is essentially twofold: firstly, he alleged that the refusal of the residence permit had lacked legal basis, and secondly, that the domestic authorities had failed to duly carry out a careful balancing of the individual and public interests in question and to properly establish all the relevant circumstances concerning his family situation.

72. The Court notes at the outset that the Sub-Delegation and subsequently the domestic courts relied on section 31 of Institutional Law no. 4/2000 and Articles 47 and 124 of Royal Decree no. 557/2011 (see paragraphs 32,43 and 38 above), setting out the eligibility criteria for the relevant type of residence permit. The Court further notes that the domestic courts’ findings were fully in line with the established domestic case-law concerning similar issues (see paragraphs 48-52 above) and explaining, in detail, why a sole reference to receipt of welfare benefits (and notably basic income) did not fulfil the “sufficient means” criterion for the purposes of an application for a residence permit for exceptional reasons through social integration. The Court is therefore unable to accept the applicant’s argument that the domestic decisions in the applicant’s case lacked legal basis, or that the relevant legal provisions were unforeseeable in their application.

73. Turning to the balancing exercise carried out by the domestic courts, the Court notes that the domestic courts explained the general interest behind the requirement to submit proof of sufficient resources without recourse to

social benefits, that is, in terms of the Court's case-law, the interest of controlling immigration in the general interests of the economic well-being of the country. As noted by the courts, the applicant chose to regularise his status through an application for a temporary residence permit for exceptional circumstances through social integration, without engaging in work activity. The appellate court repeated that the relevant section of the LOEX applicable to the case was a means of regularising the status of foreign nationals who had stayed in Spain illegally, without requiring them to leave the Spanish territory to apply for the necessary authorisation. However, when foreign nationals applied for such a residence permit, it was essential that they demonstrated sufficient means to support themselves in the country without becoming a burden on the public treasury, as one of the aspects of their social integration. The appellate court also noted, referring to its settled case-law, that, in principle, the receipt of welfare benefits could have been accepted if recourse to such benefits had been circumstantial and consequent to a temporary loss of his or her own means of subsistence – which, however, was not the applicant's case.

74. Bearing in mind that a wide margin is usually allowed to the State when it comes to general measures of economic or social strategy (see, among others, *Biao v. Denmark* [GC], no. 38590/10, § 93, 24 May 2016; *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 70, 2 November 2010; and *Stummer v. Austria* [GC], no. 37452/02, § 89, ECHR 2011), the Court does not consider that such assessment was deficient from the standpoint of Article 8 of the Convention. In the context of family reunification requests, the Court has already found that it was not unreasonable that a refugee sponsor should be required to demonstrate that he or she has a sufficient independent and stable income, without recourse to welfare benefits, in order to meet the basic living expenses of the family members with whom he or she seeks reunification (see *Dabo v. Sweden*, no. 12510/18, § 105, 18 January 2024, with further references; and *mutatis mutandis*, *B.F. and Others v. Switzerland*, nos. 13258/18 and 3 others, § 95, 4 July 2023). In the present case, even though the relevant case-law concerning family reunification cannot be directly transposed to cases such as the present one, the Court does not find unreasonable the stance taken by the domestic courts that, in principle, an applicant requesting a residence permit on the ground of social integration be required to demonstrate that he or she has sufficient means of subsistence without recourse to welfare benefits.

75. Having said that, the Court will turn to the applicant's key argument pertaining to the authorities' failure to display sufficient flexibility and to take into account the applicant's specific circumstances, such as his son's serious illness, which has resulted in disability and high dependency on his parents, as well as the applicant's need to provide constant care for his child.

76. The Court does not accept the Government's argument that the domestic courts took into account the applicant's wife's residence permit for

training purposes (see paragraph 59 above). That permit was only granted to her in 2023, based on the amendment to the Royal Decree in 2022 (see paragraphs 29 and 40 above), that is, after the domestic judgments at issue had been given.

77. However, even though the reasoning of the domestic judgments appears succinct, the Court finds that the domestic courts took into consideration the applicant's personal and family situation, including the son's situation. It cannot be said that the domestic courts' approach in this case was overly formalistic (contrast, among other authorities, *Khachatryan and Konovalova v. Russia*, no. 28895/14, § 27, 13 July 2021). The courts rejected the applicant's argument pertaining to his inability to work, noting that the child's mother was also residing in Spain without apparently being employed at the material time – an aspect which, as the Court notes, was omitted by the applicant in his appeal submissions to the domestic courts. The domestic courts concluded that the second parent could have taken care of the son. Bearing in mind that the task of assessing the child's best interests in each individual case is primarily one for the domestic authorities (see *El Ghatet v. Switzerland*, no. 56971/10, § 47, 8 November 2016), the Court sees no reason to depart from that assessment. The domestic courts had at their disposal, notably, the medical report, prepared at the applicant's family's request in 2017, from which it transpired that by that time the applicant's son had been already attending school (see paragraph 7 above). Given that (a) the child was attending an educational institution and was benefitting from specialised assistance programmes at the material time, and (b) the child's mother was, as established by the courts, apparently available to share the childcare tasks with the applicant, the Court finds no grounds to disagree with the domestic courts' dismissal of the applicant's argument that the child would have been left without care if the applicant had attempted to take steps to find a job prior to his application for a residence permit through "social roots".

78. The Court further notes the Government's argument as regards the existence of other avenues currently available to him to regularise his status, such as a request for a residence permit for training purposes, or based on other exceptional circumstances not listed in the relevant section of the Royal Decree (see paragraph 60 above). Without speculating on the outcome of any such request, the Court observes, in the light of its findings above, that the applicant failed to meaningfully explain why an attempt to lodge a fresh application on a ground more suitable to his personal circumstances would be bound to fail.

79. Furthermore, the Court notes that, in the event of a fresh application, the domestic authorities would have to assess any newly emerged circumstances and examine his and his family's situation in their light (see, *mutatis mutandis*, *S.F. v. Finland*, no. 35276/20, § 48, 8 October 2024).

80. In addition, the Court does not lose sight of the fact that, despite the applicant's being in an irregular situation in Spain for several years, and in the absence of any traceable attempt on his part to regularise his situation between 2005 and 2018, not only did the authorities tolerate his presence in Spain, but he has also been in receipt of social benefits covering his and his family's basic needs, on which, as it appears, the family has fully relied for several years

81. Accordingly, the Court cannot find that, by taking into account the applicant's exclusive reliance on welfare benefits when balancing the competing interests, the Spanish authorities overstepped the margin of appreciation afforded to them in deciding whether the applicant was entitled to a residence permit he had requested (see, *mutatis mutandis*, *B.F. and Others v. Switzerland*, cited above, § 133).

(d) Conclusion

82. Having regard to the foregoing, the Court concludes that in the circumstances of the present case the domestic authorities struck a fair balance between the interests of the applicant and those of the State in controlling immigration in the general interests of the economic well-being of the country, and that they did not overstep the margin of appreciation afforded to them when refusing the applicant's application for a specific type of temporary residence permit.

83. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 17 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Kateřina Šimáčková
President