

EXECUTIVE SUMMARY

An individual residence rights case under the EU-UK Withdrawal Agreement has revealed critical legal issues in the application of EU law by Spanish administrative and judicial authorities—specifically concerning the Withdrawal Agreement and Directive 2004/38/EC—with potentially significant implications extending beyond a single matter.

This analysis places the ‘Recurso Extraordinario de Revisión’ currently being prepared into its broader legal context: as an important case with implications for rule of law, access to justice, and the protection of fundamental rights guaranteed by EU law.

I. CRITICAL LEGAL ISSUES NOT PREVIOUSLY ADDRESSED

A. Key Legal Arguments Identified During Appeal Preparation

During the preparation of the current extraordinary appeal, several **critical legal arguments** emerged that had not been raised in previous stages of the proceedings:

Critical Legal Point	Legal Basis	Status in Original Proceedings
No registration required for first 3 months	Article 6(1) Directive 2004/38/EC	Not raised as ground of challenge
No financial resources required before 31 Dec 2020	Article 6(1) + Commission confirmation	Not argued as applicable exemption
Declaratory vs. constitutive scheme	Article 18 Withdrawal Agreement + Commission letter	Not invoked in administrative or judicial proceedings
Spain's 2023 acknowledgment	Commission letter ref. Spain's instructions to Foreigners' Offices	Not discovered or cited
CITCO evidence accessibility	Article 18(4) Withdrawal Agreement + GDPR	Not pursued as evidentiary avenue

B. Legal Significance

These arguments involve fundamental principles of EU law:

1. Direct applicability of Article 6 Directive 2004/38/EC, which automatically grants residence rights for three months;
2. The declaratory nature of Spain's Withdrawal Agreement implementation scheme;
3. EU law supremacy requiring national authorities to disapply incompatible national practices;
4. State obligations to facilitate access to underlying documents (Article 18(4) WA);
5. European Commission confirmation of correct legal interpretation, including Spain's own 2023 acknowledgment.

Legal Question:

How many other cases involving UK nationals arriving in December 2020 proceeded without these central legal principles being identified, argued, or adjudicated?

II. SYSTEMIC MISAPPLICATION: ADMINISTRATIVE AND JUDICIAL PATTERNS

A. Administrative Practice Observations

The administrative treatment of this case revealed a consistent pattern:

1. Absolute requirement for padrón registration as condition for establishing residence before 31 December 2020;
2. Requirement for proof of financial resources and insurance for arrivals in December 2020;
3. Limited facilitation of access to State-held evidence concerning border entry records;
4. Application of Article 7 conditions to a period where only Article 6 applied;
5. No apparent adjustment following Spain's 2023 communication to the Commission acknowledging the correct interpretation.

B. Judicial Treatment Observations

Review of the judicial proceedings reveals:

1. No court identified the Article 6 three-month exemption as applicable to the facts;
2. No court addressed the incompatibility between padrón requirements and Article 6;
3. No court applied EU law supremacy to disapply the administrative practice;
4. No court addressed State obligations under Article 18(4) to facilitate evidence access;
5. No court engaged with the declaratory nature of Spain's Withdrawal Agreement implementation.

The pattern suggests systematic misapplication rather than isolated error.

III. ACCESS TO JUSTICE CONSIDERATIONS

A. The Complexity Barrier

The path to the current appeal required:

- Identification of complex EU law principles not previously raised;
- Engagement with European Commission to obtain authoritative interpretation;
- GDPR-based access requests to obtain State-held CITCO border records;
- Notarial preservation and formal administrative submission (ORVE) procedures;
- Extensive legal research into Withdrawal Agreement implementation;

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- Sustained engagement over multiple years through administrative and judicial levels.

Observation: This level of legal sophistication and procedural persistence would be extremely difficult for most individuals to achieve without specialised expertise.

B. The Resource Question

Successfully navigating to the current stage has required:

- Financial capacity to sustain multi-year proceedings;
- Time and persistence to pursue complex administrative procedures;
- Legal knowledge or capacity to acquire it through research;
- Language proficiency in legal Spanish and English;
- Psychological resilience to withstand institutional resistance.

Observation: These requirements create significant barriers to effective access to justice for those with limited resources, education, language skills, or health challenges.

IV. BROADER IMPLICATIONS

A. Potential Scale of Affected Individuals

If Article 6 exemption was systematically not identified or applied, the affected population could include:

- UK nationals arriving in Spain in December 2020 (11-31 days before transition period end);
- Those who accepted administrative refusals without judicial challenge;
- Those who challenged but were refused based on the same legal standard;
- Those who departed Spain rather than pursue complex litigation;
- Vulnerable individuals (elderly, disabled, linguistically isolated) unable to navigate the system.

Estimate: Potentially hundreds of cases, possibly more.

B. Rule of Law Implications

This case raises fundamental questions about:

1. Effective application of EU law at Member State level;
2. Judicial function in identifying and applying directly applicable EU law;
3. State compliance with obligations acknowledged to the European Commission;
4. Access to justice for individuals asserting EU law rights;

5. Effectiveness of preliminary reference procedures (Article 267 TFEU) when domestic courts do not identify EU law issues.

V. THE STRATEGIC IMPORTANCE OF THE CURRENT APPEAL

A. Legal Precedent Value

This Recurso Extraordinario de Revisión under Article 102 LJCA is significant because:

1. CITCO evidence provides objective, State-generated proof resolving the central factual dispute;
2. European Commission letter confirms authoritative interpretation and Spain's acknowledgment;
3. Article 102 mechanism provides procedural avenue when decisive documents emerge post-judgment;
4. EU law supremacy arguments require Spanish courts to engage with fundamental principles;
5. Success would establish binding precedent for similar cases in Canary Islands jurisdiction.

B. Systemic Reform Potential

If the appeal succeeds, it could:

1. Clarify correct application of Article 6 Directive 2004/38/EC to December 2020 arrivals;
2. Establish State obligations to facilitate access to border entry records;
3. Vindicate declaratory scheme principles in Spanish implementation;
4. Trigger review of similarly situated cases;
5. Prompt administrative guidance ensuring future compliance.

VI. FRAMEWORK FOR LEGAL REPRESENTATION

A. Required Expertise Areas

Effective representation in this matter requires specialized knowledge of:

1. EU Free Movement Law (Directive 2004/38/EC)
 - Article 6 three-month residence rights
 - Article 7 extended residence conditions
 - Distinction between declaratory and constitutive schemes
2. EU-UK Withdrawal Agreement
 - Article 10 (personal scope)
 - Article 13 (residence rights)

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- Article 18 (residence documents and State obligations)
- 3. Spanish Administrative Procedure
 - Recurso Extraordinario de Revisión (Article 102 LJCA)
 - Evidence requirements and burden of proof
 - State-held document access procedures
- 4. EU Law Supremacy Doctrine
 - Simmenthal obligation to disapply incompatible national law
 - Principle of effectiveness (effet utile)
 - Article 267 TFEU preliminary reference procedure
- 5. European Commission Engagement
 - Infringement procedure mechanics
 - Authoritative interpretation value
 - Use of Commission positions in national proceedings

B. Case Status and Preparation

The case currently presents with:

- Legally structured arguments based on EU law supremacy, Withdrawal Agreement obligations, and Article 102 LJCA grounds;
- Decisive documentary evidence (CITCO records, Commission letter) obtained post-judgment;
- Clear procedural pathway via Recurso Extraordinario de Revisión;
- Comprehensive legal research supporting all major arguments;
- Strategic clarity regarding objectives and potential outcomes.

What is required: Experienced counsel to review the prepared materials, provide strategic guidance on Spanish procedural nuances, and represent before the Tribunal Superior de Justicia de Canarias. The extraordinary appeal has been fully drafted and requires filing in its current form.

VII. ANTICIPATED CHALLENGES AND RESPONSES

A. Anticipated Procedural Challenges

Challenge	Legal Response
Article 102 admissibility (force majeure requirement)	CITCO database accessibility analysis; State control of decisive evidence

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Challenge	Legal Response
"Could have been raised earlier" argument	Impossibility of access to restricted national security database; GDPR procedures post-judgment
"Merits re-argument" objection	Framing as factual alteration (Article 102) not legal reinterpretation
Commission letter not "binding"	Framing as authoritative interpretation + Spain's acknowledgment

B. Anticipated Substantive Challenges

Challenge	Legal Response
Padrón registration as valid evidence requirement	Article 6 incompatibility; Commission confirmation; Spain's 2023 acknowledgment
Article 7 conditions applicable before 31 Dec 2020	Article 6 three-month exemption; temporal analysis; Commission letter
Declaratory scheme doesn't prevent evidence requirements	Article 18(4) facilitation obligation; proportionality; State-held evidence
CJEU case law not directly on point	Dias, Wijzenbeek, Simmenthal principles applicable; Article 267 reference option

VIII. BROADER ADVOCACY AND AWARENESS

A. Purpose of This Analysis

This document serves multiple objectives:

1. Identify critical legal issues for legal and academic community awareness;
2. Attract specialized counsel with relevant EU law and Spanish administrative procedure expertise;
3. Document the legal framework for others in similar situations;
4. Contribute to legal discourse on Withdrawal Agreement implementation;
5. Support potential systemic reform by evidencing patterns of misapplication.

B. Transparency and Accountability

Publication of this analysis reflects a commitment to:

- Legal transparency in complex EU law matters;

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- Access to justice through information sharing;
- Professional standards in EU law practice;
- Rule of law through documented challenge to institutional error;
- Systemic improvement via constructive engagement with legal issues.

IX. COMPENSATION AND REMEDIES

A. Legal Basis for Compensation Claims

Should the appeal succeed, potential compensation grounds include:

1. Breach of EU law obligations (State liability under Francovich doctrine);
2. Violation of fundamental rights (Article 47 Charter - effective remedy);
3. Administrative error causing prolonged legal uncertainty;
4. Denial of rights from 1 January 2021 to present;
5. Costs and expenses incurred in pursuing correct legal interpretation.

B. Objectives Beyond Individual Remedy

Compensation would serve to:

1. Acknowledge institutional error and its consequences;
2. Provide meaningful remedy for years of uncertainty;
3. Establish deterrent against future misapplication;
4. Validate the effort required to challenge systemic error;
5. Support continued advocacy for similarly affected individuals.

X. MESSAGE TO SIMILARLY SITUATED INDIVIDUALS

A. Legal Clarification

If you are a UK national who:

- Arrived in Spain in December 2020 (between 1-31 December);
- Were refused Withdrawal Agreement residence status;
- Were told you needed padrón registration before 31 December 2020;
- Were told you needed to prove financial resources/insurance before 31 December 2020;

The legal position may be:

- Article 6(1) Directive 2004/38/EC required only a valid passport for residence until 20 March 2021;

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- No registration, resources, or insurance was required before 31 December 2020;
- Spain acknowledged this interpretation to the European Commission in 2023;
- Your refusal may have been based on an incorrect legal standard.

B. Potential Avenues

Depending on individual circumstances and timelines, potential options may include:

1. Fresh application with correct legal arguments;
2. Administrative review based on new legal interpretation;
3. Judicial review if within applicable time limits;
4. Extraordinary review if decisive evidence (e.g., CITCO records) can be obtained;
5. European Commission complaint alleging systemic misapplication;
6. Collective action if sufficient similarly situated individuals can be identified.

Note: Legal advice specific to individual circumstances is essential.

XI. CALL FOR LEGAL EXPERTISE

A. Representation Requirements

The current appeal requires counsel with:

- Proven expertise in EU free movement law and Withdrawal Agreement;
- Experience before Tribunales Superiores de Justicia in extraordinary review proceedings;
- Strategic vision for potential CJEU preliminary reference if needed;
- Commitment to pursuing systemic clarification beyond individual remedy;
- Cultural competence in Canary Islands legal practice.

B. Engagement Framework

Interested counsel should be prepared to:

1. Review comprehensive legal materials already prepared;
2. Provide strategic guidance on procedural and substantive refinements;
3. Represent before Tribunal Superior de Justicia de Canarias;
4. Consider long-term engagement for potential follow-on proceedings (preliminary reference, compensation claims, etc.);
5. Collaborate with client who has developed substantial expertise in the legal issues.

XII. ACADEMIC AND POLICY IMPLICATIONS

A. Research Questions

This case raises important questions for EU law scholarship:

1. How effectively are Member States implementing the Withdrawal Agreement in declaratory scheme jurisdictions?
2. What role do preliminary references play when domestic courts fail to identify EU law issues?
3. How can Article 18(4) facilitation obligations be enforced in practice?
4. What remedies exist when systemic misapplication affects vulnerable populations?
5. How can the European Commission more effectively monitor implementation?

B. Policy Reform Considerations

Potential systemic improvements include:

1. Clearer administrative guidance on Article 6 three-month residence;
2. Mandatory training for immigration officials on EU free movement law;
3. Proactive State provision of border entry records for Withdrawal Agreement applicants;
4. Regular Commission monitoring of declaratory scheme implementation;
5. Enhanced preliminary reference culture in administrative courts.

XIII. CONCLUSION: A DEFINING LEGAL MOMENT

This case represents a significant opportunity for:

- Clarification of EU law application in Withdrawal Agreement cases;
- Vindication of rule of law principles through judicial correction of administrative error;
- Access to justice demonstration that complex legal challenges can succeed;
- Systemic improvement in Spanish implementation practices;
- Professional development in EU law competence.

If the appeal succeeds, it will:

- Establish important precedent on Article 6 Directive 2004/38/EC application;
- Demonstrate effectiveness of Article 102 LJCA extraordinary review;
- Validate EU law supremacy in practice;
- Provide pathway for others in similar situations;
- Contribute to improved Withdrawal Agreement implementation.

If the appeal does not succeed at TSJ level, options remain:

- Article 267 TFEU preliminary reference to CJEU;
- European Commission infringement proceedings;
- Continued advocacy for systemic reform;
- Documentation of legal issues for academic and policy discourse.

The legal issues are clear. The evidence is compelling. The stakes are significant.

XIV. FINAL OBSERVATIONS

This case began as one individual's pursuit of residence rights guaranteed by EU law. Through persistent engagement with complex legal and administrative procedures, it has evolved into a vehicle for addressing broader questions about:

- EU law effectiveness in Member State implementation;
- Judicial function in protecting EU law rights;
- Access to justice in complex transnational legal matters;
- Professional competence in specialized EU law practice;
- Systemic accountability when institutions misapply the law.

The Recurso Extraordinario de Revisión now prepared represents the culmination of years of legal research, procedural navigation, evidence gathering, and strategic development.

What began as a seemingly routine residence case has revealed fundamental questions about how EU law operates in practice when domestic systems—administrative, judicial, and professional—fail to correctly identify and apply it.

The resolution of this appeal will have implications far beyond one individual's residence status.

It will speak to whether EU law supremacy is real, whether access to justice is achievable, and whether challenging institutional error is worthwhile.

Those are questions that matter to anyone who believes in the rule of law.

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APPENDIX: CONTACT FOR LEGAL COLLABORATION

Legal professionals with relevant expertise who are interested in discussing representation or collaboration on this matter are invited to establish contact through appropriate professional channels. Procedural representation for filing may be considered as an initial engagement scope.

Areas of particular interest:

- EU Free Movement Law (Directive 2004/38/EC)
- EU-UK Withdrawal Agreement implementation
- Spanish Administrative Procedure (Article 102 LJCA)
- EU Law Supremacy and CJEU preliminary references
- Compensation claims for EU law violations

Case characteristics:

- Comprehensive legal research and argumentation already completed
- Decisive documentary evidence obtained (CITCO, Commission letter)
- Clear procedural pathway via Article 102 LJCA
- Potential for significant precedent value
- Client with substantial case knowledge and commitment to systemic improvement

END OF CONTEXTUAL ANALYSIS

EPILOGUE: ACCESS TO JUSTICE IN COMPLEX EU LAW MATTERS

There are individuals across Spain—perhaps many—who believed the administrative system when it determined they lacked Withdrawal Agreement rights.

They may have accepted legal advice suggesting their cases were not viable.

They may have seen judicial decisions upholding administrative refusals.

The legal analysis now available suggests those determinations may have been based on an incomplete understanding of applicable EU law—specifically Article 6 of Directive 2004/38/EC and its interaction with the Withdrawal Agreement timeline.

If this appeal establishes that interpretation authoritatively, it will provide clarity for all similarly situated individuals:

Clarity that the legal framework was more protective than previously understood.

Clarity that challenging administrative determinations, even when upheld judicially, is not necessarily futile.

Clarity that EU law rights, when correctly understood and vigorously pursued, can be vindicated.

That is the broader purpose this case serves.

That is why the appeal matters beyond individual remedy.

That is why success would represent more than one person's residence status—it would represent validation of rule of law principles and access to justice for all.

END OF ANALYSIS

Special Notes:

The application procedure for UK nationals who do not hold a free movement residence document is set out under point D), starting on page 10 of the Joint Instructions below.

With regard to supporting documents, the following is set out:

“At the time of your request, the following documentation shall be provided:

- Application form –EX 20 Application for a residence document art. 18.4 for nationals of the United Kingdom (Withdrawal Agreement of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community).
- Valid and current passport of the applicant. If the passport is expired, a copy of the passport and the renewal application must be provided.
- Evidence showing that the applicant falls within the personal scope of the Agreement, in particular the beginning of his residence in Spain, and any means of proof admitted in law must be admitted.
- Documentation provided for in Article 3 of Order PRE/1490/2012 of 9 July laying down rules for the implementation of Article 7 of Royal Decree 240/2007 of 16 February on entry, free movement and residence in Spain of citizens of the Member States of the European Union and of other States parties to the Agreement on the European Economic Area.

In the case of members of the family of the United Kingdom national who also hold British nationality, they must prove that the United Kingdom national, with whom they meet or is accompanied, fulfils the conditions depending on the case in which he or she is present.”

In 2023, the Commission contacted Spain on the issue of so-called “Article 6 residence” at the of the transition period, that is, residence for the first three months under Article 6 of the Free Movement Directive 2004/38/EC, to confirm that Spain correctly understands that someone who became a Withdrawal Agreement beneficiary based on Article 6 residence at the end of the transition period cannot be required to meet the substantive residence conditions before the end of the transition period. In response to our request, Spain confirmed that they share this understanding and that they had given corresponding instructions to all Foreigners’ Offices in Spain.

Sources:

Withdrawal Agreement: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2020:029:TOC>

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 L 158, 30.4.2004, p. 77.

Spain implemented the Withdrawal Agreement residence right provisions with its Joint Instructions of the Directorate-General for Migration and the Directorate-General of the Police determining the procedure for issuing the residence document provided for in Article 18.4 of the Withdrawal

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Agreement of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, an unofficial English version of which is available here: <https://www.inclusion.gob.es/ficheros/brexit/Instruccion-conjunta-Brexit-residencia-EN-.pdf>