



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-338/13
Marjan Noorzia

Advocate General Mengozzi considers that the age limit laid down by EU law for those seeking family reunification with their spouse may also be reached after the relevant application has been submitted

Pursuit of the legitimate objective of limiting the incidence of forced marriage must not adversely affect the right to family reunification of genuinely married couples

EU law¹ identifies the group of family members of third country nationals residing in a Member State who may be entitled to a residence permit on the ground of family reunification. With regard to spouses, in order to ensure better integration and to prevent forced marriages, Directive 2003/86/EC provides that Member States may impose a minimum age (no more than 21 years) for the purpose of family reunification. The directive does not, however, specify the point at which the sponsor and his or her spouse must have reached that minimum age limit.

Under Austrian law, the spouses must necessarily have reached the minimum age of 21 at the time the application for family reunification is submitted. An application submitted before both spouses have reached the age of 21 must be rejected, even if they reach that age in the course of the procedure.

In September 2010, Mrs Noorzia, an Afghan national, applied to the Austrian embassy in Islamabad (Pakistan) for a residence permit for the purpose of family reunification with her husband, also an Afghan national living in Austria. That application was rejected by the Austrian authorities on the ground that Mrs Noorzia's husband had not reached the age of 21 at the time the application was submitted, even though he had, in any event, reached that age before the decision rejecting the application was adopted. Mrs Noorzia appealed against that decision. The matter was brought before the Verwaltungsgerichtshof (the Austrian Higher Administrative Court), which has requested the Court of Justice to consider whether Austrian legislation is compatible with the family reunification directive.

In his Opinion today, Advocate General Paolo Mengozzi makes the point first of all that the right to family reunification, which is conferred and governed by EU law, constitutes a specific aspect of the right to family life, which is, in turn, a fundamental right enshrined not only in the European Convention on Human Rights but also the Charter of Fundamental Rights of the EU.

The Court's case-law has already made clear that authorisation of family reunification is the general rule and given that, in certain circumstances, the directive requires Member States to authorise reunification without conferring on them any margin of discretion in that regard, that obligation reflects clearly defined individual rights. Therefore, any margin of discretion conferred on Member States must not be exercised in such a way as to undermine the objective of the directive itself or its effectiveness.

The Advocate General is of the view that a *literal analysis* of the relevant provision of the directive militates in favour of an interpretation to the effect that the relevant time at which the age limit laid down in the directive must be reached cannot be the point at which an application for family

¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

reunification is submitted but, rather, must be the point at which the competent authorities have accepted the application.

The Advocate General goes on to state that although the express purpose of the possibility given to Member States of imposing a minimum age limit for the purpose of family reunification is the legitimate purpose of preventing forced marriages — on the basis that being older brings with it a greater degree of maturity, which may, in theory, help the person concerned to resist pressure to enter a forced marriage — that consideration must nevertheless be balanced against the right to family reunification of those who are genuinely and sincerely married. An interpretation of the directive to the effect that it is permissible to submit an application before the age limit has been reached and to obtain the right of residence where that age limit has been reached by the time the decision of the administrative authorities on the application for family reunification is adopted is one that promotes family reunification and eschews a formalistic interpretation of the measure which prevents such reunification occurring.

Lastly, on the basis of a systematic analysis of the directive as a whole, there would appear to be no provision that establishes that reaching the age limit laid down in the directive is a formal requirement for submitting an application.

For all the above reasons, the Advocate General proposes that the Court should rule that the Austrian provision under which it is permissible to reject an application for family reunification on the ground that the age limit for exercising the right to such reunification has not been reached, even though that age limit has been reached by the time the authorities' decision is adopted, is incompatible with the family reunification directive.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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