

Case C-112/20

Request for a preliminary ruling

Date lodged:

28 February 2020

Referring court:

Conseil d'État (Belgium)

Date of the decision to refer:

6 February 2020

Applicant:

M. A.

Defendant:

État belge

**CONSEIL D'ÉTAT, SECTION DU CONTENTIEUX ADMINISTRATIF
(COUNCIL OF STATE, ADMINISTRATIVE LITIGATION SECTION,
BELGIUM).**

ELEVENTH CHAMBER

JUDGMENT

...

In the proceedings:

M. A.,

...

v

État belge

...

[Or. 2]

I. Subject of the application

By application lodged on 15 March 2019, M. A. requested that [a] judgment ... of [21 February 2019] of the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) be set aside

II. Proceedings before the Conseil d'État

... [Procedure]

III. Facts relevant to the examination of the matter

It is apparent from the findings made in the judgment under appeal that the applicant was served, on 24 May 2018, with an order to leave the territory together with an order for detention pending removal, as well as an entry ban, notified on the following day. Those decisions note that the applicant stated that he had a partner of Belgian nationality and a daughter born in Belgium but uphold the offences committed by the applicant and the fact that, therefore 'the person concerned, by virtue of his conduct, is considered to be a threat to public order'.

The judgment under appeal dismisses the action for annulment brought against those decisions. **[Or. 3]**

IV. Sole ground of appeal

Arguments of the applicant

The applicant puts forward a sole ground of appeal, alleging infringement of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 7, 24 and 47 of the Charter of Fundamental Rights of the European Union, Articles 7, 39/2, 39/56, 39/65, 62, § 2, 74/11 and 74/13 of the Law of 15 December 1980 on the entry in Belgian territory, residence, establishment and removal of foreign nationals, and principles guaranteeing respect for the best interests of the child, proportionality and a detailed and exhaustive examination.

By his first complaint, the applicant criticises the Council for asylum and immigration proceedings for finding that he has no interest in bringing his claim alleging an infringement of Article 24 of the Charter of Fundamental Rights of the European Union, since he does not specify that he is acting on behalf of his minor child. Citing Article 74/13 of the Law of 15 December 1980, he states that his descendant is not a foreign national, is not the addressee of the contested acts and does not therefore have standing to bring proceedings. He considers that it is not necessary for him to act on behalf of the child for the best interests of that child to be protected.

By his second complaint, the applicant observes that the judgment under appeal finds that ‘with regard to the alleged infringement of Article 74/13 of the [Law of 15 December 1980], while that provision requires the defendant to take certain elements into account, it does not, however, require the defendant to give reasons for the decision taken in that regard’. In his opinion, that finding is in breach of the provisions referred to in the ground of appeal which require administrative decisions to set out their reasons in fact and in law.

Furthermore, as regards the finding that ‘in the present case, the defendant took the family life of the applicant into account in the contested acts’, the applicant argues that that statement does ‘not logically follow from the previous statement’, since the Council for asylum and immigration proceedings merely stated that ‘family life had been taken into account regardless of the reasons given for the decisions’, and that it is ‘inconsistent with paragraph 4.3.3 of the judgment by which the Council for asylum and immigration proceedings calls into question the statement of reasons given for the decisions by which the defendant considers that the family situation of the applicant and his child was not validly established’.

By his third complaint, the applicant criticises paragraph 4.3.3 of the judgment and considers that the findings set out there should, *quod non*, lead to the annulment of the contested acts.

By his fourth complaint, the applicant maintains that the reference made by the Council for asylum and immigration proceedings to a judgment of the European Court of Human Rights is irrelevant. He considers that at issue in the present case, unlike the case giving rise to that judgment, is a negative obligation not to remove, rather than a positive obligation to authorise residence. According to the applicant, ‘therefore, contrary to what the [Council for asylum and immigration proceedings] finds, the applicant cannot be required to invoke an exceptional circumstance [Or. 4] in order to claim that his removal from the territory for a three-year period adversely affects his family life protected under Article 8 ECHR (and by Articles 7 and 24 of the Charter)’.

Next, the applicant criticises the judgment under appeal for not explaining how the principle of proportionality was respected, since this was challenged in the application. Moreover, he observes that, in order to continue family life with him, the child is required to leave EU territory and to deny herself the effective enjoyment of the rights conferred on her by virtue of her status as an EU citizen.

... [questions for a preliminary ruling suggested by the applicant in the main proceedings]

Decision of the Conseil d’État

As regards the first part of the ground of appeal, the judgment under appeal contains the following passage:

‘4.1. With regard to the sole ground of appeal, as a preliminary point, the Conseil [d’État] the applicant has no interest in bringing proceedings on the basis of the alleged infringement of Article 24 of the Charter, since he does not declare that he is acting on behalf of his minor child’.

The administrative court considers, implicitly but unequivocally in paragraph 4.2.3 of the judgment under appeal, that the best interests of the child must be taken into account only if the administrative decision in question expressly refers to the child or if that decision is challenged in the child’s name before the Council for asylum and immigration proceedings. **[Or. 5]**

The applicant submits that, on the contrary, Article 74/13 of the Law of 15 December 1980 requires account to be taken of the best interests of the child when a removal decision is taken with regard to one of his or her parents, ‘without restricting that requirement only to decisions taken in respect of a child’.

The criticism concerns the interpretation of Article 74/13 [of the Law of 15 December 1980] which transposes Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Before examining the applicant’s complaints in more detail, it is necessary to refer the question set out in the operative part, which concerns the interpretation and scope to be given to the obligation to take account of the best interests of the child as provided for in Article 5 of Directive 2008/115/EC of 16 December 2008, to the Court of Justice of the European Union for a preliminary ruling.

... [irrelevant elements]

ON THOSE GROUNDS,

THE CONSEIL D’ÉTAT HEREBY ORDERS:

Article 1.

The proceedings are stayed.

Article 2.

The following question is referred to the Court of Justice of the European Union for a preliminary ruling:

‘Should Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, which requires Member States, when implementing the directive, to take account of the best interests of the child, together with Article 13 of that directive and Articles 24 and

47 of the Charter of Fundamental Rights of the European Union, be interpreted as requiring the best interests of the child, an EU citizen, to be taken into account even if the return decision is taken with regard to the child's parent alone?

... [Or. 6]

... [procedure]

... [procedure and composition of the formation of the Court]

WORKING DOCUMENT