Case C-768/19

Request for a preliminary ruling

Date lodged:

18 October 2019

Referring court:

Bundesverwaltungsgericht (Germany)

Date of the decision to refer:

15 August 2019

Defendant and appellant on a point of law:

Bundesrepublik Deutschland

Applicant and respondent in the appeal on a point of law:

SE

[…]

Bundesverwaltungsgericht (Federal Administrative Court)

ORDER

[…]

In the administrative dispute between

1. SE,

[…]

[…]

applicant and respondent in the appeal on a point of law,

[…] **[Or. 2]** […]

and

Bundesrepublik Deutschland

(Federal Republic of Germany),

[…]

defendant and appellant on a point of law,

other party:

The Representative of the Federal Interest
at the Bundesverwaltungsgericht,
[…] 10557 Berlin,

the First Chamber of the Bundesverwaltungsgericht,
on the basis of the hearing held on 15 August 2019
[…]

has made the following order:

The proceedings are stayed.

The following questions are referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU:

1. In the case of an applicant for asylum who, before the point at which the age of majority is reached by his child, by way of whom a family existed in the country of origin and to whom subsidiary protection status was granted, following the attainment of majority, on the basis of an application for protection filed before the age of majority was reached ('the beneficiary of protection'), entered the host Member State of the beneficiary of protection and also made an application for international protection there ('the applicant for asylum'), and in the case of a national provision which, in relation to the granting of a right to be granted subsidiary protection, that right being derived from the beneficiary of subsidiary protection, makes reference to Article 2(j) of Directive 2011/95/EU, is the point in time at which the **[Or. 3]** decision on the asylum application of the applicant for asylum is taken or an earlier point in time to be taken into account for the question as to whether the beneficiary of protection is a 'minor' within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU, such as the point in time at which

(a) the beneficiary of protection was granted subsidiary protection status,

(b) the applicant for asylum made his asylum application,

(c) the applicant for asylum entered the host Member State, or

(d) the beneficiary of protection made his asylum application?

2. In the event

(a) that the point in time at which the application is made is decisive:

Is the request for protection expressed in writing, verbally or in any other way and made known to the national authority responsible for the asylum application (request for asylum) or the formal application for international protection to be taken as the basis in this respect?

(b) that the point in time at which the applicant for asylum enters the territory or the point in time at which he makes the asylum application is decisive: Is it also significant whether, at that point in time, the decision on the application for protection of the beneficiary of protection who was subsequently recognised as being a beneficiary of subsidiary protection had not yet been taken?

3. (a) What requirements are to be imposed in the situation described in Question 1 in order for the applicant for asylum to be a 'family member' (Article 2(j) of Directive 2011/95/EU) who is present 'in the same Member State in relation to the application for international protection' in which the person who was granted international protection is present and by way of whom the family 'already' existed 'in the country of origin'? Does this require, in particular, that family life between the beneficiary of protection and the applicant for asylum within the meaning of Article 7 of the Charter has been resumed in the host Member State, or is the mere simultaneous presence of the beneficiary of protection and the applicant for asylum in the host Member State sufficient in this respect? Is a parent a family member even if, depending on the circumstances of the individual case, entry into the territory was not intended for the purpose of actually assuming responsibility within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU for a beneficiary of international protection who is still a minor and unmarried? **[Or. 4]**

(b) If Question 3(a) is to be answered to the effect that family life between the beneficiary of protection and the applicant for asylum within the meaning of Article 7 of the Charter must have been resumed in the host Member State, is the point in time at which it resumed significant? In that regard, must account be taken, in particular, of whether family life was re-established within a certain period of time after the applicant for asylum entered the territory, or at the point in time at which the applicant for asylum makes the asylum application or at a point in time at which the beneficiary of protection was still a minor?

4. Does the status of an applicant for asylum as a family member within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU end when the beneficiary of protection reaches the age of majority and the associated responsibility for a person who is a minor and unmarried ceases to exist? In the event that this is answered in the negative: Does this status as a family member (and the associated rights) continue to exist indefinitely beyond that point in time or does it cease to exist after a certain period of time (if so: what period of time?) or upon the occurrence of certain events (if so: which events?)?

Grounds:

I

1 The first applicant requests that he be granted subsidiary protection status.

2 The applicant is, by his own account, an Afghan national. He is the father of a son born on 20 April 1998, who entered the territory of the Federal Republic of Germany in 2012. By a final decision of the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) of 13 May 2016, moreover, his asylum application was rejected and he was granted subsidiary protection status.

3 By his own account, the applicant entered the Federal Republic of Germany by land in January 2016. He applied for asylum in February 2016 and filed a formal application for international protection on 21 April 2016. The Federal Office for Migration and Refugees rejected his requests to be granted the right of asylum and refugee status **[Or. 5]** or subsidiary protection status and his request for a declaration that there are grounds prohibiting his deportation pursuant to the first sentence of Paragraph 60(5) and (7) of the Aufenthaltsgesetz (German Law on residence; 'the AufenthG').

4 By the contested judgment, the Verwaltungsgericht (Administrative Court) imposed an obligation on the defendant to grant subsidiary protection status to the applicant on the basis of Paragraph 26(5), in conjunction with the first sentence of Paragraph 26(3), of the Asylgesetz (Law on asylum; 'the AsylG'), as the parent of an unmarried minor who is a beneficiary of protection. According to the Verwaltungsgericht, the son of the applicant had still been a minor at the time when the asylum application was made, which is the relevant time in this regard. In this connection, an asylum application was to be regarded as having been made as soon as the competent authority became aware of the request for asylum of the person seeking protection.

5 By its 'leap-frog' appeal on a point of law, the defendant claims that the first sentence of Paragraph 26(3) of the AsylG has been infringed. Pursuant to the first sentence of Paragraph 77(1) of the AsylG, it argues, the decisive factor for the assessment of the factual and legal situation is, in principle, and thus in this case too, the time of the last hearing before the court ruling on the merits or — in the

absence of such a hearing — the time of the final decision of the court ruling on the merits. Paragraph 26(3) of the AsylG does not contain any express statutory exemptions in this regard. Its factual requirements and its structure suggest that, in any event, only a minor who was still a minor when his own status was granted can derive a right. The provision serves the special protection interests of the minor entitled to protection, which, in principle, exist only as long as he is a minor. Even if minority were to be based on the time of the parent's asylum application, however, it is not the time of the material request for asylum (Paragraph 13 of the AsylG) that is decisive in that regard, but rather the time of the formal asylum application (Paragraph 14 of the AsylG). For the purpose of satisfying the application requirement laid down in the first sentence of Paragraph 26(3) of the AsylG, it is not sufficient that the competent authority — in this case the Federal Office for Migration and Refugees — is merely aware of the request for asylum. A prerequisite for recognition is a (formal) application, which, in order to be effective, can be made only with the competent authority.

II

6 The proceedings are to be stayed. A preliminary ruling on **[Or. 6]** the questions set out in the operative part of the decision is to be obtained from the Court of Justice of the European Union ('Court of Justice') pursuant to Article 267 TFEU. These questions concern the interpretation of Article 2(j) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9; 'Directive 2011/95/EU').

7 1. The legal assessment under national law is governed by the Law on asylum (AsylG) […].

8 The relevant legal framework of the case is formed by the following provisions of national law:

Paragraph 13 of the AsylG

(1) An asylum application exists if it can be inferred from the foreign national's intention, expressed in writing, verbally or in any other way, that he seeks protection in the territory of the Federal Republic from political persecution or that he requests protection against removal or any other form of forced return to a State in which he is at risk of persecution within the meaning of Paragraph 3(1) or of serious harm within the meaning of Paragraph 4(1).

(…)

Paragraph 14 of the AsylG

(1) The asylum application shall be lodged at the local branch of the Federal Office which is assigned to the reception centre responsible for admitting the foreign national. (…)

(…)

Paragraph 26 of the AsylG

(…)

(2) An unmarried minor who is the child of a beneficiary of asylum and who was a minor at the time of his asylum application shall be recognised as being eligible for asylum on application if the recognition of the foreign national as a beneficiary of asylum cannot be challenged and that recognition cannot be revoked or withdrawn.

(3) The parents of an unmarried minor who is a beneficiary of asylum or another adult within the meaning of Article 2(j) **[Or. 7]** of Directive 2011/95/EU shall be recognised as being eligible for asylum on application, if

1. the recognition of the person's eligibility for asylum cannot be challenged,

2. the family within the meaning of Article 2(j) of Directive 2011/95/EU already existed in the State in which the person eligible for asylum is politically persecuted,

3. they entered the territory prior to the recognition of the person's eligibility for asylum or they lodged the asylum application immediately after entering the territory,

4. the recognition of the person's eligibility for asylum cannot be revoked or withdrawn, and

5. they are responsible for taking care of the person eligible for asylum.

Points 1 to 4 of the first sentence shall apply *mutatis mutandis* to unmarried siblings of the minor person eligible for asylum who are minors at the time of their application.

(…)

(5) The provisions of subparagraphs 1 to 4 shall apply *mutatis mutandis* to family members within the meaning of subparagraphs 1 to 3 of beneficiaries of international protection. Eligibility for asylum shall be replaced by refugee status or subsidiary protection. (…)

(…)

Paragraph 77 of the AsylG

(1) In disputes coming within the scope of this Law, the court shall take into account the situation of fact and of law obtaining at the time of the last hearing; if judgment is given without a hearing, the relevant point in time shall be that at which judgment is given. (…)

(…)

9 2. The questions referred are germane to the final decision and require clarification by the Court of Justice.

10 2.1 The questions referred are relevant to the decision on the applicant's request to be granted subsidiary protection status on the basis of Paragraph 26(5), in conjunction with the first sentence of Paragraph 26(3), of the AsylG, as the parent of an unmarried minor eligible for protection.

11 The applicant is a family member within the meaning of the first sentence of Paragraph 26(5) of the AsylG and pursuant to the first sentence of Paragraph 26(3) of the AsylG and a father within the meaning of the first sentence of Paragraph 26(3) of the AsylG and therefore a parent of his unmarried son. The son is eligible for subsidiary protection within the meaning of the first sentence of Paragraph 26(3) of the AsylG and Article 18 of Directive 2011/95/EU. The granting of subsidiary protection status cannot be challenged (point 1 of the first sentence of Paragraph 26(3) of the AsylG). In accordance with point 2 of the first sentence of Paragraph 26(3) of the AsylG, the family within the meaning **[Or. 8]** of Article 2(j) Directive 2011/95/EU existed in Afghanistan, as the State in which the son faces a risk of suffering serious harm within the meaning of Article 15 of Directive 2011/95/EU. The applicant also entered the territory before his son was recognised as a person eligible for subsidiary protection (point 3 of the first sentence of Paragraph 26(3) of the AsylG). There are no grounds for assuming that the recognition of the son as a person eligible for subsidiary protection could be revoked or withdrawn (see point 4 of the first sentence of Paragraph 26(3) of the AsylG), nor is there anything to indicate that the applicant is caught by the grounds for exclusion pursuant to the first sentence of Paragraph 26(4) and Paragraph 4(2) of the AsylG.

12 The applicant's application to be granted subsidiary protection as a parent would therefore be successful if, at the time which is decisive for the assessment, the son was a minor within the meaning of the first sentence of Paragraph 26(3) of the AsylG and the applicant was responsible for taking care of him within the meaning of point 5 of the first sentence of Paragraph 26(3) of the AsylG.

13 Paragraph 26(3) of the AsylG is intended as a means of implementing Article 23(2) of Directive 2011/95/EU […]. Pursuant to the latter provision, Member States are to ensure that members of the family of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35 of that directive, in

accordance with national procedures and as far as is compatible with the personal legal status of the family member. The notion of family and therefore also the notion of family member for the purpose of the national basis for entitlement are governed by the express reference to Article 2(j) of Directive 2011/95/EU in point 2 of the first sentence of Paragraph 26(3) of the AsylG. Pursuant to the third indent of Article 2(j) of Directive 2011/95/EU, the term 'family member' of the beneficiary of international protection, when that beneficiary is a minor and unmarried, includes the father of that person, in so far as he is present in the same Member State in relation to the application for international protection and the family already existed in the country of origin. It is not clear from the wording of the provision which point in time is relevant for the purpose of assessing whether the beneficiary of international protection is a minor and whether, and possibly within what limits, the father's status **[Or. 9]** as a family member continues to exist even after the beneficiary of international protection attains the age of majority.

14 2.2 The questions referred require clarification by the Court of Justice.

15 (a) By Question 1, the referring court seeks, in a situation such as that in the present case, to determine what point in time is to be taken into account for the purpose of assessing whether the person eligible for protection is a 'minor' within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU.

16 So far, in relation to the minority of the beneficiary of protection, the national case-law has in some cases also taken account — in line with the principle under Paragraph 77 of the AsylG, a principle that is generally applicable under the national law pertaining to the asylum process — of the time at which the decision on the parent's asylum application was taken (which, in accordance with the German transposition concept, is also always based on the derived family protection, which is identical in terms of its legal effect). In other cases, however, it has been deemed sufficient that the beneficiary of protection was still a minor at the time when the parent made the asylum application. In this respect, the reasons provided are generally based on provisions of EU law, and the explicit fixing of the time in the case of derived international protection for children (see Paragraph 26(2) of the AsylG) is transferred to international protection for parents, despite the lack of legislation in this regard.

17 In this respect, the wording of Article 2(j) of Directive 2011/95/EU does not provide any clear insight in the context of the granting of subsidiary protection to a parent. The fact that the third indent of Article 2(j) of [the German version of] Directive 2011/95/EU expressly differentiates between the perfect tense (with regard to the beneficiary of international protection and the existence of the family in the country of origin) and the present tense (with regard to residence, responsibility for the beneficiary of protection, and minority) might indicate that the minority of the beneficiary of protection must be assessed on the basis of a current point in time, such as, for instance, the point in time at which the decision on the (asylum) application of the parent is taken. The requirement for a

connection between the asylum application of the beneficiary of protection and the residence of the family member in the host Member State may also militate in favour of the argument **[Or. 10]** that, at the earliest, a point in time following the point at which the family member established his residence is decisive for the assessment of the minority of the beneficiary of protection. Considering the directive from a systematic perspective, the reference to the 'accompanying' members of the family of applicants for asylum in the second sentence of recital 16 of Directive 2011/95/EU as well as the principle of (maintaining) family unity enshrined in Article 23 and in the second sentence of recital 18 of Directive 2011/95/EU may also point towards this. From a teleological perspective, the principles of safeguarding the best interests of the child, equal treatment, legal certainty and the practical effectiveness of EU law may militate against an assessment of minority at a point in time at which the proceedings are already well advanced. However, in the case of foreign nationals who have already reached the age of majority at the time when the decision is taken, the granting of subsidiary protection to a parent who has travelled to the country to join a child is objectively no longer suitable for safeguarding the interests of a child.

18 Both Question 1 and the other questions relate to a situation in which the family member who is a beneficiary of protection and from whom a protection status is to be derived has not been recognised as a refugee, but rather has merely been granted subsidiary protection status. For the purpose of determining the relevant point in time, a distinction may be made in this respect between a person eligible for international protection for whom refugee status has been recognised (Article 13 et seq. of Directive 2011/95/EU) and a third-country national or stateless person who has been granted subsidiary protection status (Articles 18 and 19 of Directive 2011/95/EU). Regarding the recognition of refugee status, recital 21 of Directive 2011/95/EU makes it clear that the recognition of refugee status is a declaratory act. In paragraphs 53 and 54 of its judgment of 12 April 2018 — C-550/16 [ECLI:EU:C:2018:248] — concerning Article 2(f) of Directive 2003/86/EC, the Court of Justice of the European Union deduced from that recital that, after the application for international protection is submitted in accordance with Chapter II of Directive 2011/95/EU, a person who fulfils the material conditions has a subjective right to be recognised as having refugee status, and that is so even before the formal decision is adopted in that regard, meaning that the right to family reunification pursuant to Article 10(3)(a) of Directive 2003/86/EC could not depend upon the moment at which the competent national authority formally adopted the decision recognising **[Or. 11]** the refugee status of the person concerned. Irrespective of the question of whether the case-law on the definition in Article 2(f) of Directive 2003/86/EC is transferable to the almost identically worded definition in Article 2(l) of Directive 2011/95/EU and/or the family unity to be maintained pursuant to Article 23 of Directive 2011/95/EU, there is no comparable recital — regarding the granting of subsidiary protection — which expresses the required granting as a (purely or primarily) declaratory act. Another factor that may militate in favour of a distinction between the link to refugee protection, for which an extension to the targeted persecution due to the (continued) existence of family proximity to family members cannot be

ruled out, and the link to the granting of subsidiary protection status is the fact that, in those cases, a parent seeks to derive subsidiary family protection from his child without himself having asserted valid reasons for the assumption that, if he were to return to his country of origin, he would run a real risk of suffering serious harm within the meaning of Article 15 of Directive 2011/95/EU; the presumption of an extension of persecution that is linked to family ties is generally not justified in this case.

19 (b) In the event that Question 1 is answered to the effect that the relevant time for the assessment of minority is the time at which the application for the granting of international protection is made, by either the beneficiary of protection or the family member, Question 2.(a) serves to clarify the follow-up question of whether the point in time at which the material request for asylum is made or the point in time at which the asylum application is formally lodged is to be regarded as the point in time at which the application is made.

20 The first sentence of Article 6(2) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 20103 L 180, p. 60; 'Directive 2013/32/EU') draws a distinction between making an application for international protection and lodging it. The provision obliges Member States to ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Article 6(3) of Directive 2013/32/EU permits Member States to prescribe that applications for international protection be lodged in person **[Or. 12]** and/or at a designated place. Article 6(4) of Directive 2013/32/EU justifies an exception to the rule laid down in Article 6(3) of Directive 2013/32/EU (CJEU, judgment of 26 July 2017 — C-670/16 [ECLI:EU:C:2017:587], *Mengesteab* — paragraph 101). Pursuant to the former provision, notwithstanding Article 6(3) of Directive 2013/32/EU, an application for international protection is deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned. In line with Article 6(2) of Directive 2013/32/EU, the material request for asylum pursuant to Paragraph 13(1) of the AsylG does not require a specific form, whereas the asylum application pursuant to the first sentence of Paragraph 14(1) of the AsylG must in principle be formally lodged at the competent local branch of the Federal Office. This is not put on record and does not become the subject of an administrative procedure under asylum law until the request for asylum has been formally received by the competent authority.

21 The fact that Article 6 of Directive 2013/32/EU authorises the Member States to provide for the formal lodging of an application and only requires them to make it possible to do this as soon as possible, without specifying any specific time limits in that regard, could militate in favour of an assessment of minority at the time when the application is formally lodged. Although no minimum, indicative or maximum time limits are prescribed here […], it must be possible for the application to be formally lodged immediately, that is to say, without undue delay.

However, it has not been established beyond doubt whether taking the formal lodging of an application into account is in line with the principles of equal treatment, legal certainty and *effet utile*.

22 (c) In so far as the assessment of the minority of the beneficiary of protection is to be based on the time at which the family member within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU enters the territory or on the time at which the asylum application is made by that family member, Question 2.(b) seeks clarification as to whether this also applies to the case where, at that point in time, the decision on the application for protection of the beneficiary of protection who was subsequently recognised as being a beneficiary of subsidiary protection had not yet been taken. **[Or. 13]**

23 (d) Question 3.(a) seeks further clarification as to the overarching requirements of Article 2(j) of Directive 2011/95/EU, pursuant to which the family member must be present in the same Member State in relation to the application for international protection and the family must have already existed in the country of origin.

24 In this regard, clarification is required as to what material requirements Article 2(j) of Directive 2011/95/EU imposes on the elements 'in relation to the application for international protection', 'present in the same Member State' and 'the family already existed in the country of origin', in a situation such as that in the present case. In this respect, clarification is required, in particular, as to whether family life within the meaning of Article 7 of the Charter between the beneficiary of protection and the family member — the parent in this case — must have resumed in the host Member State or whether the mere simultaneous presence of the beneficiary of protection and the family member in the host Member State is sufficient for establishing the status of family member.

25 It is clear from the wording of Article 2(j) of Directive 2011/95/EU that the elements 'present (…) in relation to the application for international protection' and 'the family already existed in the country of origin' are to be interpreted as meaning that the mere simultaneous presence of the beneficiary of protection and the family member in the host Member State is not sufficient. The requirement that the family has already existed in the country of origin is based on the assumption that the proximity of the members of the core family to the protection-relevant events in the country of origin normally means that the family member himself is also vulnerable (see recital 36 of Directive 2011/95/EU). The system on which the directive is based could also point towards an understanding along these lines, in which regard Article 23 and recitals 16, 18 and 19 of Directive 2011/95/EU are to be considered. Article 23(1) of Directive 2011/95/EU serves to maintain family unity. Article 23(1) of Directive 2011/95/EU extends the scope of the article to include, in addition to the family members specified in Article 2(j) of Directive 2011/95/EU, other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time. It can be

inferred from both provisions **[Or. 14]** that Article 23 of Directive 2011/95/EU is intended, in particular, to protect the dependent members of the family unit, in particular minors. In order to achieve that protection objective, the provision also benefits the other family members covered by it. Recitals 18 and 19 of Directive 2011/95/EU could also support such an interpretation of the provision. Recital 18 of Directive 2011/95/EU encourages Member States to treat the best interests of the child as a primary consideration and refers in particular to the principle of family unity in this respect. Pursuant to recital 19 of Directive 2011/95/EU, it is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child. Recital 16 of Directive 2011/95/EU, according to which the directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their 'accompanying' family members, does not preclude an interpretation requiring the family unit to be restored while exercising parental responsibility in the best interests of the child; in that regard, the present Chamber does not fail to recognise that the word 'accompanying' is also open to a broader understanding (see, in relation to the understanding of 'accompanying' in the context of the rights of EU citizens […] CJEU, judgment of 16 July 2015 — C-218/14 [ECLI:EU:C:2015:476], *Singh and Others* — paragraph 54). From a teleological perspective, there is reason to believe that, by limiting the concept of family members to the members of the nuclear family (parents and their minor children) by establishing a connection ('in relation to') with the application for international protection and by linking the 'existence of the family in the country of origin', the third indent of Article 2(j) of Directive 2011/95/EU requires the resumption of family life between the family members within the meaning of Article 7 of the Charter. Article 7 of the Charter must also be read in conjunction with the obligation to have regard to the child's best interests, recognised in Article 24(2) of the Charter, and with account being taken of the need, expressed in Article 24(3), for a child to maintain on a regular basis a personal relationship with his or her parents (CJEU, judgment of 6 December 2012 — C-356/11 and C-357/11 [ECLI:EU:C:2012: 776] — paragraph 76). In addition to the existence of legal ties, family life is characterised by a de facto family unit (see ECtHR, judgment of 2 November 2010 — no. 3976/05 [ECLI:CE:ECHR:2010:1102JUD000397605], *Yigit v. Turkey* — **[Or. 15]** paragraph 93) and a close family proximity between parents and their minor children […]. In that regard, the referring court takes the view that there would be reservations in assuming that the conditions laid down in the third indent of Article 2(j) of Directive 2011/95/EU are also satisfied where, depending on the circumstances of the individual case, the applicant parent's stay in the host Member State is not at least to a certain extent intended to assume responsibility for the unmarried minor child who is the beneficiary of protection.

26 (e) Question 3.(b) follows on from Question 3.(a) and seeks clarification regarding the relevant point in time for the assessment of a resumption of family life within the meaning of Article 7 of the Charter between the beneficiary of protection and the parent in the host Member State.

27 The referring court takes the view that it would hardly be in line with the objectives of Article 2(j) of Directive 2011/95/EU, which are set out in (d), if an applicant for asylum could invoke the resumption of family life to substantiate his status as a family member without there being any temporal restriction on the resumption of family life. In that regard, the concept of 'in relation to the application for international protection' could militate in favour of the view that Article 2(j) of Directive 2011/95/EU requires that the restoration of the de facto family unit must take place within a certain period after entry into the territory.

28 Furthermore, the words 'responsible' and 'is a minor' in the third indent of Article 2(j) of Directive 2011/95/EU also suggest that the beneficiary of protection must have still been a minor within the meaning of Article 2(k) of Directive 2011/95/EU at the relevant time of the restoration of the family unit in the host Member State.

29 (f) Question 4 seeks clarification as to whether the status of an applicant for asylum as a family member within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU ends when the beneficiary of protection reaches the age of majority and the associated responsibility for a person who is a minor and not married ceases to exist. **[Or. 16]**

30 The third indent of Article 2(j) of Directive 2011/95/EU provides that the father of the beneficiary of international protection is a member of the family when that beneficiary is a minor, is present in the same Member State in relation to the application for international protection and the family already existed in the country of origin. The link between the status of family member to the period of minority of the beneficiary of protection, which is limited by Article 2(k) of Directive 2011/95/EU, as well as the protection of the best interests of the child pursued by the third indent of Article 2(j) of Directive 2011/95/EU, could militate in favour of status of the father as a family member within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU being lost when the beneficiary of protection reaches the age of majority.

31 If the status of the father of the beneficiary of protection as a family member within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU does in principle continue to exist beyond the point at which the child reaches the age of majority, clarification is required as to whether — beyond the situation in which the father's stay in the host Member State or the child's eligibility for protection comes to an end — that status ceases to exist at a certain point in time or upon the occurrence of a certain event.

32 […] [Entitlement to make the reference]

[…]