Court of Justice of the European Union
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Press and Information

Judgment in Joined Cases C-133/19, C-136/19 and C-137/19
B. M. M., B. S., B. M and B. M. O. v État belge

The date to be taken into account, in order to determine whether a family member of a sponsor is a 'minor child' is the date of submission of the application for entry and residence

The action against the rejection of an application for family reunification of a minor child cannot be declared inadmissible on the sole ground that the child has reached majority during the court proceedings

In 2012, B. M. M., who has refugee status in Belgium, submitted applications for residence permits by way of family reunification for his three minor children at the Belgian embassy in Conakry (Guinea). Those applications were rejected. In 2013, B. M. M. submitted further similar applications at the Belgian embassy in Dakar (Senegal). In 2014, the competent Belgian authorities rejected those applications on the ground that they were based on fraudulent and misleading information.

Hearing actions against those decisions, on 25 April 2014, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) declared them inadmissible on 31 January 2018 on the ground of lack of interest in bringing proceedings. According to settled national case-law, the interest in bringing proceedings must exist when an action is brought and continue to exist throughout the proceedings. In the present case, even taking into account the dates of birth set out in the applications, the children concerned had all become adults on the date of delivery of the decision of the Council for asylum and immigration proceedings and therefore no longer satisfied the conditions laid down by the provisions governing family reunification which minor children are entitled to enjoy.

The three children concerned lodged an appeal on a point of law before the Conseil d'État (Council of State, Belgium). According to them, the interpretation of the Council for asylum and immigration proceedings, first, disregarded the principle of effectiveness of EU law, in so far as it prevents them from enjoying the right to family reunification guaranteed by the relevant directive[1] and, secondly, infringes the right to an effective remedy.[2] In that context, the Council of State decided to refer questions to the Court of Justice for a preliminary ruling.

In today's judgment, the Court replies, in the first place, that **the date which should be referred to in order to determine whether a 'minor child' is concerned is that of the submission of the application for entry and residence for the purposes of family reunification**, and not the date on which a decision was given on that application by the competent authorities of that Member State, as the case may be, after an action against the decision rejecting such an application.

The Court notes, in that regard, that the objective pursued by Directive 2003/86 is to promote family reunification and, also, to grant protection to third-country nationals, in particular minors. Moreover, the provisions of Directive 2003/86 must be interpreted and applied in the light of the right to respect for private or family life[3], read in conjunction with the obligation to have regard to

[1] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12), Article 4.
[2] Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
[3] Article 7 of the Charter.

the child's best interests, taking into account the need, for a child, to maintain on a regular basis a personal relationship with his or her parents, as provided for in the Charter.[4] The Court finds in that regard that to use the date on which the competent authority decides on the application for family reunification as the reference date for assessing the age of the applicant would not be consistent with the objectives pursued by Directive 2003/86 or the requirements of the Charter. The competent national authorities and courts would not be prompted to treat applications of minors with the urgency necessary to take account of their vulnerability and could thus act in a way which would jeopardise the rights of those minors to family reunification.

The Court notes that, in the present case, it was only on 31 January 2018, that is to say three years and nine months after the action was brought, that the Council for asylum and immigration proceedings rejected those applications and that such processing times do not appear to be exceptional in Belgium.

Accordingly, to use the date on which the decision on the application was made in order to assess the age of the applicant would not make it possible to ensure identical and predictable treatment for all applicants and could lead to significant differences in the processing of applications for family reunification between Member States and within one and the same Member State.

The Court replies, in the second place, that **the action against the rejection of an application for family reunification of a minor child cannot be held inadmissible on the sole ground that the child has reached majority during the court proceedings.**

National actions enabling the sponsor and members of his or her family to exercise their right to challenge before the courts decisions rejecting an application for family reunification must be effective and real. In addition, the dismissal of an action on the ground that it is inadmissible could not be based on a finding that the persons concerned no longer have an interest in obtaining a decision from the court seised. A third-country national whose application for family reunification has been rejected could still retain an interest, even after reaching majority, in the court's giving a decision on the merits, in so far as, in certain Member States, such a judicial decision is necessary in order to enable the applicant to bring an action for damages against the Member State in question.

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 European Union 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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[4] Article 24(2) and (3) of the Charter.